

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



721

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
for the District of Columbia Circuit

FILED OCT 13 1969

23448

Nathan J. Paulson  
CLERK

ANITA SMITH

v.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD, *Appellant*.

PAUL R. IGNATIUS, SECRETARY OF THE NAVY

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GEORGE A. ROSS

F. G. GORDON, JR.

*Attorneys for Appellant*

District Unemployment Compensation Board  
Employment Security Building  
Sixth and Pennsylvania Avenue, N.W.  
Washington, D. C. 20001



(i)

STATEMENT OF QUESTION PRESENTED

In the opinion of the appellant, constituting the District Unemployment Compensation Board, the sole question presented is:

Whether the appellant, District Unemployment Compensation Board is compelled by Federal Statute to treat the findings of a Federal agency, with respect to reason for separation of its employees, as final and conclusive.

\* \* \* \* \*

THIS CASE HAS NEVER BEEN PREVIOUSLY BEFORE THIS COURT  
UNDER THE SAME OR SIMILAR TITLE

\* \* \* \* \*

REFERENCES AND RULINGS

See Memorandum Opinion of lower Court dated July 17,  
1969 (JA 18-21).

\* \* \* \* \*

INDEX

JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE CASE.....	2-3
STATEMENT OF POINTS.....	3
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	4-8
CONCLUSION.....	8
APPENDIX OF STATUTES.....	App. 1-3

TABLE OF AUTHORITIES

CASES

Mississippi Employment Security Commission v. Mildred Rakestraw, 179 So. 830 (1965) 254 Miss 56.....	6
Welker Unemployment Compensation Case, 180 Pa. Super 534, 119 A. 2d 658 .....	6
Kaylock v. Unemployment Compensation Board of Review, 67 A 2d 801.....	6
Bliley Electric Company v. Board of Review, 158 Pa. Super. 548, 45 A 2d 898 (1946) .....	6
*Newmeyer vs. Unemployment Compensation Board of Review 144 A 2d 606-187 Pa. Super 321.....	8
*Mangle vs. Unemployment Compensation Board of Review (1961) 168 A 2d 785 - 194 Pa. Supra 420.....	8
*Saula vs. Employment Security Agency (1963) 377 P 2d 789, 8r Idaho 212.....	8

STATUTES

District of Columbia Code:

*Title 46-310 (a).....	App. 1-2
*Title 46-312 (a).....	App. 2

United States Code

*Title 5-Chapter 85, Sub-Chapter 8502 Supp. III 1965-1967 Edition.....	App.1
*Title 5-Chapter 85, Sub-Chapter 8506 Supp. III 1965-1967 Edition.....	App.1

REGULATIONS

*District Unemployment Compensation Act Regulation III-A.....	App. 2-3
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Cases and statute chiefly relied on

STATEMENT OF CASE

The appellee, Anita Smith, filed a claim for unemployment benefits with the appellant, District Unemployment Compensation Board, on July 17, 1968 under the Unemployment Compensation for Federal Employees Program. The last employer noted on her claim for benefits was the U.S. Naval Station, Supply & Fiscal Department, Washington Navy Yard, Washington, D.C. (JA 2).

This agency of the Federal Government, pursuant to 5 USC Chapter 85, Sub-Chapter 8506 (a), informed this appellant that the appellee was a Federal employee and that her reason for separation was noted on the form provided by this appellant as follows:

"I am resigning because of poor transportation, poor military supervisory-employee relations and uncongenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department.

FINDINGS: Investigation failed to support allegations of employee."

Based upon this information as to reason for separation, a claims deputy of the Board disqualified the appellee for voluntarily leaving her last employment without good cause for a period of five weeks, beginning June 9, 1968 through July 13, 1968 and potential benefits reduced in the amount of \$290.00. (JA 8). This determination was made pursuant to Title 46, Section 310(a) of the D.C. Code and 5 USC Chapter 85, Sub-Chapter 8502(b).

The appellee made a timely appeal to the Board's Appeals Examiner. A hearing was held July 25, 1968, before the Appeals Examiner and the claimant appeared. Although duly notified, the

United States Code

\*Title 5-Chapter 85, Sub-Chapter 8502 Supp. III  
1965-1967 Edition..... App.1

\*Title 5-Chapter 85, Sub-Chapter 8506 Supp. III  
1965-1967 Edition..... App.1

REGULATIONS

\*District Unemployment Compensation Act  
Regulation III-A..... App. 2-3

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Cases and statute chiefly relied on

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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23448

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DISTRICT UNEMPLOYMENT COMPENSATION BOARD

Appellant

v.

ANITA SMITH

Appellee

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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BRIEF FOR APPELLANT

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JURISDICTIONAL STATEMENT

This is a statutory appeal under the District of Columbia Unemployment Compensation Act from an order of the U.S. District Court for the District of Columbia reversing a resolution of the appellant, District Unemployment Compensation Board, which had affirmed a decision of the Board's Appeals Examiner that appellee voluntarily left employment with a Federal agency without establishing good cause. Jurisdiction in this Court is based upon D.C.Code Title 46-312 (1967). The decision of appellant Board, the appeal papers filed in the District Court and the final judgment appear at pages 12-13 of the Joint Appendix.

STATEMENT OF CASE

The appellee, Anita Smith, filed a claim for unemployment benefits with the appellant, District Unemployment Compensation Board, on July 17, 1968 under the Unemployment Compensation for Federal Employees Program. The last employer noted on her claim for benefits was the U.S. Naval Station, Supply & Fiscal Department, Washington Navy Yard, Washington, D.C. (JA 2).

This agency of the Federal Government, pursuant to 5 USC Chapter 85, Sub-Chapter 8506 (a), informed this appellant that the appellee was a Federal employee and that her reason for separation was noted on the form provided by this appellant as follows:

"I am resigning because of poor transportation, poor military supervisory-employee relations and ungenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department.

FINDINGS: Investigation failed to support allegations of employee."

Based upon this information as to reason for separation, a claims deputy of the Board disqualified the appellee for voluntarily leaving her last employment without good cause for a period of five weeks, beginning June 9, 1968 through July 13, 1968 and potential benefits reduced in the amount of \$290.00. (JA 8). This determination was made pursuant to Title 46, Section 310(a) of the D.C. Code and 5 USC Chapter 85, Sub-Chapter 8502(b).

The appellee made a timely appeal to the Board's Appeals Examiner. A hearing was held July 25, 1968, before the Appeals Examiner and the claimant appeared. Although duly notified, the

SUMMARY OF ARGUMENT

Title 5, USC, Chapter 85, Sub-Chapter 8506 (a), supplement iii (1965-1967 Ed.) provides that the employing Federal agency shall make findings as to the reasons for separation of its employees. The Department of the Navy submitted on June 27, 1968 its findings as to the reasons for the separation of the appellee as follows:

"I am resigning because of poor transportation, poor military supervisory-employee relations and ungenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department.

FINDINGS: Investigation failed to support allegations of employee."

By statute these Federal findings are final and conclusive on the appellant.

Based upon these findings, which are binding on this appellant, it is obvious that the appellee has failed to establish that she had good cause for voluntarily leaving her most recent employment.

The appellant's decision, therefore, was neither unreasonable, arbitrary nor capricious.

ARGUMENT

Under the Unemployment Compensation for Federal Employees Program which this agency administers pursuant to agreement with the Secretary of Labor, 5 USC, Chapter 85, Sub-Chapter 8506 (a) provides that with respect to entitlement of Federal employees to compensation, the employing agency shall make the findings as to



STATEMENT OF CASE

The appellee, Anita Smith, filed a claim for unemployment benefits with the appellant, District Unemployment Compensation Board, on July 17, 1968 under the Unemployment Compensation for Federal Employees Program. The last employer noted on her claim for benefits was the U.S. Naval Station, Supply & Fiscal Department, Washington Navy Yard, Washington, D.C. (JA 2).

This agency of the Federal Government, pursuant to 5 USC Chapter 85, Sub-Chapter 8506 (a), informed this appellant that the appellee was a Federal employee and that her reason for separation was noted on the form provided by this appellant as follows:

"I am resigning because of poor transportation, poor military supervisory-employee relations and uncongenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department.

FINDINGS: Investigation failed to support allegations of employee."

Based upon this information as to reason for separation, a claims deputy of the Board disqualified the appellee for voluntarily leaving her last employment without good cause for a period of five weeks, beginning June 9, 1968 through July 13, 1968 and potential benefits reduced in the amount of \$290.00. (JA 8). This determination was made pursuant to Title 46, Section 310(a) of the D.C. Code and 5 USC Chapter 85, Sub-Chapter 8502(b).

The appellee made a timely appeal to the Board's Appeals Examiner. A hearing was held July 25, 1968, before the Appeals Examiner and the claimant appeared. Although duly notified, the

employer did not attend the hearing.

The Appeals Examiner noted that pursuant to 5 USC Chapter 85 Sub-Chapter 8506 (a), Congress had provided the Federal employing agency, with respect to reason for termination of Federal service, was final and conclusive. He therefore affirmed the decision of the claims deputy in that the claimant had failed to establish good cause for voluntarily leaving her most recent employment. (JA 9).

The appellee on July 31, 1968, by a timely appeal, appealed the Appeals Examiner's decision to the appellant and on August 6, 1968, by resolution, affirmed the decision of the Appeals Examiner. (JA 11).

On September 5, 1968, appellee filed suit in this Honorable Court. (JA 12-13).

#### STATEMENT OF POINTS

The lower court erred in:

1. Reversing the resolution of the appellant Board in affirming the decision of its Appeals Examiner that appellee quit her Federal employment without good cause.

2. Directing the appellant Board to make an independent decision on the reason appellee quit her Federal employment based solely on evidence produced at the hearing.

3. Directing the appellant Board to disregard the certification by the Federal agency as to reasons for appellee's terminating her employment when such reasons are binding on this appellant by statute.

SUMMARY OF ARGUMENT

Title 5, USC, Chapter 85, Sub-Chapter 8506 (a), supplement iii (1965-1967 Ed.) provides that the employing Federal agency shall make findings as to the reasons for separation of its employees. The Department of the Navy submitted on June 27, 1968 its findings as to the reasons for the separation of the appellee as follows:

"I am resigning because of poor transportation, poor military supervisory-employee relations and uncongenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department.

FINDINGS: Investigation failed to support allegations of employee."

By statute these Federal findings are final and conclusive on the appellant.

Based upon these findings, which are binding on this appellant, it is obvious that the appellee has failed to establish that she had good cause for voluntarily leaving her most recent employment.

The appellant's decision, therefore, was neither unreasonable, arbitrary nor capricious.

ARGUMENT

Under the Unemployment Compensation for Federal Employees Program which this agency administers pursuant to agreement with the Secretary of Labor, 5 USC, Chapter 85, Sub-Chapter 8506 (a) provides that with respect to entitlement of Federal employees to compensation, the employing agency shall make the findings as to

reason for termination of Federal service and these findings shall be final and conclusive. (App. 1). Also under the Unemployment Compensation for Federal Employees Program, it is provided under 5 USC Chapter 85, Sub-Chapter 8502 (b) that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation would be payable to him under the unemployment compensation law of the State. (App 1).

The District Unemployment Compensation Act, Title 46, Section 310 (a) of the D.C. Code, provides that an individual who leaves his most recent work voluntarily must establish good cause for such leaving. (App 1). The Board under Regulation III-A Relating to Employees has provided guidelines as to what is and what is not good cause. (App 2-3). It is noted that the burden of proof for establishing good cause is upon the claimant. It is further noted that under Board Regulation III-A (5) "General dissatisfaction with work" is not considered good cause for such voluntary leaving. (Emphasis added.) The appellee, according to the information submitted by the Federal agency which is binding on the Board resigned for the following reasons:

"I am resigning because of poor transportation, poor military supervisory-employee relations and congenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department."

It is further noted that the Federal agency made findings and submitted the following to the Board: "Investigation failed to support allegations of employee."

As previously stated, the findings as to the reasons for termination of Federal service when submitted to this Board are final and conclusive.

What is and what is not good cause for voluntary leaving depends a great deal on all the circumstances involved in each case. In the instant case, it would appear that the claimant had become generally dissatisfied with her Federal position and voluntarily resigned.

There are cases in various jurisdictions in which 'good cause' is defined by the Courts. The Mississippi Supreme Court stated in Mississippi Employment Security Commission v. Mildred Rakestraw, 179 So. 830 (1965) 254 Miss 56.

"A claimant who quits her job in a moment of pique during a brief misunderstanding with the plant manager - Held to have quit suitable employment voluntarily without good cause and was not discharged."

Likewise, Welker Unemployment Compensation Case, 180 Pa. Super, 534, 119 A. 2d 658, the Superior Court stated:

"The burden is upon claimant who has voluntarily left his employment to show that he had good cause for doing so. In order to constitute good cause, the cause for leaving employment must meet the test of ordinary common sense and prudence."

A similar expression of the general rule is found in Kaylock v. Unemployment Compensation Board of Review, 67 A 2d 801. Bliley Electric Company v. Board of Review (In Re Sturdevant) 158 Pa. Super. 548, 45 A 2d 898 (1946) in which the Superior Court of Pennsylvania reiterated the doctrine that,

"In order to constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial not trifling, and reasonable, not whimsical."

Based upon findings of the Federal agency as submitted to this Board, one would have to come to the same conclusion as the Appeals Examiner in his decision that the appellee failed to establish that she had good cause for voluntarily leaving and therefore was subject to the disqualification imposed.

#### ARGUMENT II

A judge in the court below dismissed this complaint against the Navy Department who was a co-defendant in this action. This was the Federal agency that made the findings as to the reasons for appellee's separation. The appellee in her Memorandum of Points and Authorities for Summary Judgment, page 3, admitted that the appellant's application of the law as to the facts was correct. If appellee was dissatisfied at the Navy Department, proper administrative procedures should have been followed in that agency.

It is not for the appellant to make findings as to the reasons for separation. Congress has decreed that these findings are to be made by the Federal agency. Appellee filed an appeal with the Civil Service Commission to adjust her alleged grievances with the agency but she chose to have the appeal dismissed before the Commission could take any administrative action on her appeal. (See page 6, lines 19 through 25 of the transcript). She then resigned from her position with the Federal agency. Her action closed any avenues she may have had to adjust her grievances with that agency. She was not terminated for cause by the agency. She voluntarily resigned.

At this point the appellee is attempting to substitute the appellant for the Federal agency to correct her grievances, if any, she may have had with the Department of the Navy. The proper forum to have her grievances adjusted is her former employer.

For example the landmark case on this particular point is Newmeyer vs. Unemployment Compensation Board of Review, 144 A 2d 606-187 Pa. Super 321. In that case a Federal postal employee was discharged and applied for State unemployment compensation. The fact that the employee was not granted a hearing before Federal authorities was a matter concerning Federal authorities and not the State. It is further stated in the same case that where the discharged Federal employee applied for State unemployment compensation, it is not necessary for the Federal authorities to appear in person before a referee and Board to testify concerning reasons for workers termination, but Federal employing agency should certify facts as to this matter and whether under facts certified claimant is entitled to compensation is to be determined by the State law.

Accord. Mangle vs. Unemployment Compensation Board of Review, (1961) 168 A 2d 785 - 194 Pa. Supra. 420. Saulla vs. Employment Security Agency (1963) 377 P 2d 789, 85 Idaho 212.

#### CONCLUSION

The appellant's decision is in accord with the statute and its decision was neither unreasonable, arbitrary nor capricious.

For these and the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

George A. Ross

F. G. Gordon, Jr.

Attorneys for Appellant

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Employment Security Building  
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Washington, D.C. 20001

APPENDIX OF STATUTES

5 USC Code Chapter 85 Sub-Chapter 8502 Supp III (1965-1967 Ed.)

"(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation Law of the State if his Federal service and Federal wages assigned under Section 8504 of this Title to the State had been included as employment and wages under that State law."

5 USC Code Chapter 85 Sub-Chapter 8506 Supp III (1965-1967 Ed.)

"(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this sub-chapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal Service, and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this sub-chapter. The information shall include the findings of the employing agency concerning (1) whether or not the Federal employee has performed Federal services; (2) the periods of Federal service; (3) the amount of Federal wages; and (4) the reasons for termination of Federal Service. The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for correction by the employing agency of errors and omissions. Findings made in accordance with the regulations are final and conclusive for the purpose of sections 8502 (d) and 8503 (c) of this title. This subsection does not apply with respect to Federal service and Federal wages covered by sub-chapter II of this chapter."

46 D.C.Code Section 310

"(a) An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which such leaving occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the

case. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount."

46 D.C.Code Section 312

"(a) Within thirty days after the decision of the Board has become final, any party to the proceeding may appeal from the decision to the District Court of the United States for the District of Columbia. Upon the filing of any such appeal notice thereof shall be served upon the Board by the appellant and upon any other party to the proceeding. Such appeal shall be heard by the court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Board and no bond shall be required for entering such appeal. In no event shall any appeal act as a supersedeas. In any appeal under this section the findings of the Board, or of the examiner or appeal tribunal, as the case may be, as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law: Provided, That no appeal shall be permitted under this section by any party who has not first exhausted his administrative remedies as provided by this Act."

Regulation III A of the Rules and Regulations Re-ating to Employees

"A. Voluntary Leaving Without Good Cause

In determining whether the leaving is such as to disqualify the individual for benefits for the time prescribed, it must appear that the leaving on his part was (1) voluntary in fact, within the ordinary meaning of that term, and (2) without good cause, in the light of all such facts, conditions, and circumstances as are relevant to the particular case. Ordinarily a leaving will be presumed to be involuntary on the part of the claimant unless the facts clearly indicate otherwise. Where it appears that the leaving was voluntary, the burden of proof shall be on the claimant to establish good cause. What is good cause for leaving will accordingly depend upon the facts in each case and will not be confined to causes connected solely with the employment itself. The test will be--what would the reasonable and prudent individual in the labor market do

in like circumstances. (Approved October 26, 1954, effective January 1, 1955.)

For example, the following in general, would not be considered good cause for leaving:

1. Refusal to obey reasonable rules and regulations.
2. Minor reduction in wages.
3. Transfer from one type of work to another which is reasonable and necessary.
4. Marriage or divorce, resulting in a change of residence.
5. General dissatisfaction with work.
6. Vague prospects of other work deemed by the claimant more desirable.

If the Board finds that a claimant has left his most recent work without good cause, it will proceed to fix such a period of disqualification and resultant cancellation of potential benefit rights (within the limitation of the Act) as it deems warranted by the character and circumstances of the voluntary separation with due consideration to the claimant's past record of employment, duration of most recent employment and other mitigating circumstances. (Approved October 26, 1954, effective January 1, 1955.)"

JOINT APPENDIX

INDEX TO JOINT APPENDIX

RELEVANT DOCKET ENTRIES.....	1
ADMINISTRATIVE RECORD	
Claim Record Card.....	2
Claim Record Card Continued.....	3
Claim Record Card Continued.....	4
Claim Record Card Continued.....	5
Monetary Determination.....	6
Request for Wage and Separation Information - UCFE.....	7
Determination by Claims Deputy.....	8
Decision of Appeals Examiner.....	9 & 10
Board's Resolution Affirming Appeals Examiner's Decision.....	11
PLEADINGS	
Complaint of Appellee.....	12-13
Answer of Appellant.....	13-14
Appellant's Motion for Summary Judgment.....	15
Statement of Appellant of Material Facts as to Which There is No Genuine Issue.....	15-16
Department of the Navy's Motion to Dismiss.....	17
Order Dismissing Department of the Navy.....	17
Appellee's Motion for Summary Judgment.....	18
Memorandum Opinion of the Judge.....	18-21
Order Granting Summary Judgment to Appellee.....	21-22
Notice of Appeal.....	22-23

RELEVANT DOCKET ENTRIES

1968

September 5	Complaint of Appellee
September 25	Answer of Appellant

1969

January 21	Appellant's Motion for Summary Judgment
January 21	Statement of Appellant of Material Facts as to Which There is No Genuine Issue
January 29	Department of the Navy's Motion to Dismiss
March 7	Order Dismissing Department of the Navy
March 10	Appellee's Motion for Summary Judgment
July 17	Memorandum Opinion of the Judge
July 29	Order Granting Summary Judgment to Appellee
July 31	Notice of Appeal

2A 2

577 54 8 1/2 0 2 NAME (FIRST) (MIDDLE-MAIDEN NAME IF MARRIED) (LAST)  
 577 54 8 1/2 0 (FIRST) (MIDDLE-MAIDEN NAME IF MARRIED) (LAST)  
 577 54 8 1/2 0 (FIRST) (MIDDLE-MAIDEN NAME IF MARRIED) (LAST)

156 DARRINGTON Street, S.W. Wash. 20032 L.O. NO. 92  
 156 (STREET) (APT. NO.) (CITY) (STATE) (ZIP CODE)

561-5463 3/24/39 PAID 1968 MALE ☐ FEMALE ☒  
 561-5463 (TELEPHONE NUMBER) 3/24/39 (DATE OF BIRTH) PAID 1968 (YEAR)

LAST EMPLOYER (PRINT)  
 EMPLOYER'S BUSINESS NAME U.S. Naval Station  
 STREET ADDRESS Supply & Fiscal, Wash. Navy  
 CITY & STATE Wash. D.C. ZIP CODE 20390

NOTE: A COPY OF THIS CLAIM WILL BE SENT TO YOUR LAST EMPLOYER.  
 11. DATE YOU LAST WORKED: June 14, 1968  
 12. WHY DID YOU LEAVE YOUR LAST JOB? POOR TRANSPORTATION  
 POOR MILITARY SUPV-  
 EMPLOYEE RELATIONS  
 COULDN'T ADVANCE

HAVE YOU APPLIED FOR OR ARE YOU RECEIVING A RETIREMENT PENSION OR ANNUITY?  
 NO ☒ YES ☐ IF "YES", CHECK:  
 SOCIAL SECURITY ☒ OTHER ☐

HAVE YOU HAD FEDERAL MILITARY OR CIVILIAN SERVICE WITHIN THE PAST 18 MONTHS?  
☒ YES ☐ NO

DEPENDENTS: DO YOU WHOLLY OR MAINLY SUPPORT A CHILD, STEPCHILD, WIFE, HUSBAND, PARENT, STEPPARENT, BROTHER, OR SISTER? CHECK APPROPRIATE BOX  
 YES ☐ NO ☒

DO NOT WRITE BELOW  
 FILING DATE: 6-17-68 (5-8)  
 PRIOR D. C. CLAIM: NONE  
 DEPENDENTS CODE: NONE

DO NOT WRITE BELOW THIS LINE

NAME OF DEPENDENT	RELATIONSHIP	AGE	WORKING	INCOME
Edw. A. Smith		3		
Wife				
Unemployed				

NT ADDRESS  
 UNABLE TO WORK  
 NT ADDRESS  
 UNABLE TO WORK

MARKS (INCLUDING OTHER NAMES AND SOCIAL SECURITY NUMBERS):  
 839  
 1st OCCUPATION TITLE: PERSONNEL CLERK  
 1st OCCUPATION CODE: 205.368  
 2nd OCCUPATION TITLE:   
 2nd CODE:   
 EMPLOYER'S TYPE OF BUSINESS: Fed Govt

IF YOU ARE CLAIMING BENEFITS PAYABLE BY THE DISTRICT UNEMPLOYMENT COMPENSATION BOARD AND CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT. I AM AWARE THE LAW IMPOSES PENALTIES FOR FALSE STATEMENTS MADE IN CONNECTION WITH MY  
 Mrs. Anita C. Smith C. D. Brook

DISTRICT UNEMPLOYMENT COMPENSATION BOARD CLAIM RECORD CARD

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2

I certify that in my benefit rights interview today I have been informed of my rights and responsibilities in connection with this claim.

I certify that in my benefit rights interview today I have been informed of my rights and responsibilities in regard to my benefits.

Child: Mrs. Anita Claudine Smith 7-3-68 Initials: AKS  
Date: 7-10-68 Initials: AKS

Chattanooga, Tenn. 7-10-68 Date 7-10-68 Initials Barry  
Last Employer Notice Mailed \_\_\_\_\_  
GUARANTEE FOR BENEFIT PAYMENTS

I register for work and claim waiting-period credit or unemployment insurance benefits in accordance with the provisions of the District of Columbia Unemployment Compensation Act for each calendar week for which I sign below, and certify with respect to each week that I have not received nor claimed benefits under another Federal or State Unemployment Insurance Law. I certify that during each such week I was physically able to work and available for work. I further certify that during each such week I was not engaged in full time employment and that my total earnings from all sources were as reported for each week for which I am so engaged. To the extent that my claim for benefits is under a Federal Program, I further certify that I have not applied for and am not receiving military education, training or subsistence allowances from the Veterans Administration. I further certify (if applicable) that my status as to pregnancy is properly reported for each such week. I further certify that, with the exception of Social Security or other ability benefits, I am not receiving neither have I applied for nor been awarded any amount as a retirement pension or retirement annuity except as reported. I am aware that the law imposes penalties for making any false statements in connection with this claim.

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**original bound volume**

JA 4

045 0920

Gross  
CUC ☐UCFE ☒UCX ☐

Social Security Account Number	Initial	Initial	Last Name	O. C. Date	Expir. Date
577 548735	A	N	SMITH	6-17-68	24-9

## Continued Claim Certification and Record of Visits.

I register for work and claim waiting-period credit or unemployment insurance benefits in accordance with the provisions of the District of Columbia Unemployment Compensation Act for each calendar week for which I sign below, and certify with respect to such week, that I have not received nor claimed benefits under another Federal or State Unemployment Insurance Law. I certify that during each such week I was physically able to work and available for work. I further certify that during each such week I was not engaged in full time employment and that my total earnings from all sources were as reported for each week for which I sign. To the extent that my claim for benefits is under a Federal Program, I further certify that I have not applied for and am not receiving an education, training or subsistence allowance from the Veterans Administration. I further certify (if applicable) that my status as to pregnancy is properly reported for each such week. I further certify that, with the exception of Social Security or disability benefits, I am not receiving neither have I applied for nor been awarded an amount as a retirement pension or retirement annuity except as reported. I am aware that the law imposes penalties for making any false statements in connection with this claim.

LINE	Pay No.	Week Ending Date	Earnings	Able Avail.	Pregnancy	Schooling	Retirement Annuity	156 DARRINGTON ST. S.W. Claimant's Certifying Signature PERSONNEL CLERK	2003 Date Filed 20-3-68	Interviewer 368	
1											
2								To Appeals	7-15-68	445	637
3								claimant appeared 5 weeks delay for Vol. quit			
4											
5								late received WIC 27-8. claim filed appeal by mail on 6-14-68			
6								was contacted by phone and instructed to return in person to			
7								file DUCS 401 and certify for work weekly benefits			
8								Examiner 7-15-68			
9								27-8 none ✓ - - - 0 Mrs. Anita C. Smith 7-15-68 445 637			
10								Early release WIC 28-8. Claimant on 7-13-68 but reported Friday			
11								to submit request for appeal hearing. allowed to appear early to			
12								avoid double reporting this week. Examiner 7-15-68			
13								28-8 none ✓ - - - 0 Mrs. Anita C. Smith 7-15-68 445 637			
14								29-8 none ✓ - - - 0 Mrs. Anita C. Smith 7-24-68 445 637			
15								1.30-8 none yes ✓ - - - 0 Anita C. Smith 7-31-68 445 637			
16								Appeals Examination determined 7-25-68			
17								by the Board 8-6-68			
18								2 31-8 none ✓ - - - 0 Anita C. Smith 8-17-68 445 637			
19								03 32-8 none ✓ - - - 0 Anita C. Smith 8-17-68 445 637			
20								41 53-8 none ✓ - - - 0 Anita C. Smith 8-31-68 445 637			
21								5 34-8 none ✓ - - - 0 Anita C. Smith 8-25-68 445 637			
22								24-8 none ✓ - - - 0 Anita C. Smith 8-25-68 445 637			
23								6 35-8 none ✓ - - - 0 Anita C. Smith 8-4-68 445 637			
24								PI			
25											
26											
27											
28											

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Continued Claim Certification and Record of Visits.

	Pay No.	Week Ending Date	Earnings	Able Avail.	Preg-nancy	School-ing	Retire-ment Annuity	Claimant's Certifying Signature	Date Filed	Interviewer	I.
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## DISTRICT UNEMPLOYMENT COMPENSATION BOARD

## MONETARY DETERMINATION

A N SMITH		9	26	17	80		58		58	1972	34		24	9		M	577	54	8
CLAIMANT'S NAME		L	DATE CLAIM FILED			D E P	UI	UCFE	UCK	TOTAL WEEKLY BENEFITS	MAXIMUM BENEFITS	MAX WEEKS	BENEFIT YEAR END	D E T	S	SOCIAL SECURITY			
EMPLOYER NO.		38		3538		EMPLOYER'S NAME				US NAVAL STATION				WAGES		425967			
UR BASE		WAGES FOR QUARTER ENDED:				TOTAL WAGES				MAXIMUM BENEFITS BY PR									
RIOD IS:		MARCH 31		JUNE 30		SEPT 30		DEC 31		TOTAL WAGES		UI		UCFE					
72500		112100		131967		102400		425967		885800									

## DETERMINATION OF BENEFIT RIGHTS

**MONETARY DETERMINATION** - A determination of your benefit rights is shown above in the space entitled "Monetary Determination."

**RIGHT TO RECEIVE BENEFITS** - These benefits may be paid to you only for weeks occurring during your benefit year and only if you meet all the eligibility requirements of the Law for each week for which you file a claim for benefits.

**WAGES** - In computing your benefit rights all wages you received during your base period from employment covered by the District of Columbia Unemployment Compensation Act, from civilian employment performed for the Federal Government and Government of the District of Columbia, have been included and are listed on this determination. If you had Federal military service during your base period, wages for such service were also included in computing your claim.

**RIGHT TO APPEAL MONETARY DETERMINATION** - If you do not agree with the "Monetary Determination" of benefits payable or if any information on the notice is incorrect or has been omitted, you should consult a representative of the office in which you filed your claim. If a satisfactory adjustment is not made, you may appeal the determination, provided you notify this Board in writing within ten (10) days after the notice was delivered to you or mailed to your last known address.

**ADDITIONAL INFORMATION** - The "Workers' Information" pamphlet issued to you contains additional information which may be helpful to you regarding your rights and responsibilities under the various unemployment insurance programs.

1/ Benefit Year Ends. Your claim will expire 52 weeks from the date claim filed as shown above.

Date 7-10-68

AGENT STATE COPY

DISTRICT OF COLUMBIA  
DISTRICT UNEMPLOYMENT COMPENSATION BOARD  
Employment Security Building  
Sixth and Pennsylvania Avenue, N.W.  
Washington, D. C. 20001

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from the original

Form ES-932  
Rev. 2/66DISTRICT UNEMPLOYMENT COMPENSATION BOARD  
REQUEST FOR WAGE AND SEPARATION  
INFORMATION - UCFELocal Office 92Date new  
claim filed 6-17-68Date of  
request 6-17-68Name Smith, H. A. TALCAND Date of birth 2-27-37 SSA No(s) 577-54-8735  
(LAST, IN CAPS) (First) (Middle)Employee  
number(s) \_\_\_\_\_Position  
title military  
pers CLKPlace of  
employment WASH DCU.S. NAVAL STATION  
SUPPLY & FISCAL WASHNANARD  
WASH DC 20390The payroll office address was based  
on SF-8.Yes ☒ No ☐The claimant states that SF-8 was issued  
by your agency.Yes ☒ No ☐PLEASE COMPLETE THE ITEMS BELOW AND  
RETURN TWO COPIES WITHIN FOUR DAYS.

FEDERAL CIVILIAN SERVICE (always complete items 1a and 1b):

Did this person perform "Federal civilian service" (as defined for UCFE purposes) for your agency at any time during or after the base period shown in item 2a below? ☒ Yes; ☐ No. If "No," explain why this person's service was not Federal civilian service. (Use reverse side, if necessary.)3. Enter State of this person's last employment with your agency (or, if outside U.S., enter country) Wash., D.C. (Obtain from item 2b, "Duty Station," of SF-50, or, if SF-50 not used, record duty station or equivalent entry as shown on other separation document your agency uses.)

## 4. BASE PERIOD - WAGE INFORMATION

a. Report of wages:

BASE PERIOD		**GROSS WAGES (If "None," so state)
QTR. ENDING	YEAR	
<u>3-31</u>	<u>1967</u>	\$ <u>725.00</u>
<u>6-30</u>	<u>1967</u>	\$ <u>1,191.00</u>
<u>9-30</u>	<u>1967</u>	\$ <u>1,319.67</u>
<u>12-31</u>	<u>1967</u>	\$ <u>1,024.00</u>
TOTAL GROSS WAGES:		\$ <u>4,259.67</u>

b. If this person's identifying information (e.g., SSA number(s) or date of birth) listed above is different from that shown on his SF-50 or other separation document, record information from your agency's records. (Use reverse side, if necessary.)\*\*NOTE: Enter gross wages in Federal civilian service; if "NONE," so state. Do not include as wages any: (1) severance pay; or (2) lump-sum payment for terminal leave reported in item 3a below.)

## 5. TERMINAL ANNUAL LEAVE AND SEPARATION INFORMATION:

Did this person receive a lump-sum payment for terminal annual leave? ☒ Yes; ☐ No. If "Yes" show terminal-leave period from 6/17/68 to 6/17/68. Amount of lump-sum payment \$ 92.16 Date paid 7/3/68 Hourly pay rate \$ 6.52Duty hours: Workday 8; Basic workweek 40.c. Last day of active pay status (including annual and sick leave) if earlier than date of separation, or if employee not separated Aug. 1968 - V.G. - from 6-9-68 then 7-3-68 (28-4)

6. REASON FOR SEPARATION OR NONPAY STATUS. (Obtain from item 12, "Nature of Action," and item 38, "Remarks," of SF-50 or, if SF-50 not used, record equivalent information from other separation document(s) your agency uses. See Federal Personnel Manual for standards. If payroll office records are incomplete or inadequate, based on need for Forms ES-934 in similar cases, refer request to personnel office. USE REVERSE SIDE OR ATTACH COPIES OF DOCUMENTS, IF NECESSARY.)

was resigning because of poor transportation, poor military supervisory employee relations and uncongenial working conditions. My advancement in this position wasintensely impeded by (Personal Prejudice) in this department.Findings: Investigation failed to support allegations of employee.

I certify that I have examined this report which constitutes the findings of this agency and, to the best of my knowledge, it is a correct and complete report.

Signed P. D. AlexanderTitle Head, Payroll Branch Date 27 June 1968Telephone No. OX3-2339 Ext. \_\_\_\_\_

Name of parent Federal agency (e.g., Dept. Army, Dept. Interior, NASA): \_\_\_\_\_

Dept. Of The Navy

Address of payroll office if different from that shown in space at top of this form: \_\_\_\_\_

Mail to:

District Unemployment Compensation Board  
Employment Security Building  
Sixth Street & Pennsylvania Avenue, N. W.  
Washington, D. C. 20001

BE FILLED IN BY STATE AGENCY: Date UCFE Central Control Form ES-932 mailed to UCFE Control Unit, U.S. Bureau of Employment Security, Washington, D. C. 20210: \_\_\_\_\_

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DUCB 142(b)  
Rev. 5/64

**DISTRICT UNEMPLOYMENT COMPENSATION BOARD**  
**EMPLOYMENT SECURITY BUILDING**  
 Sixth and Pennsylvania Avenue, N. W.  
 Washington, D. C. 20001

**DETERMINATION BY CLAIMS DEPUTY**

577 54 8735  
 Social Security Number

Date Mailed 7-10-68  
 or  
 Date Delivered \_\_\_\_\_

Claimant (Name and Address):

ANITA N. SMITH  
156 DARRINGTON ST. S.W.  
WASH. D.C. 20032

Employer (Name and Address):

U.S. NAVAL STATION  
WASH. Navy Yard  
WASH. D.C. 20390

You are hereby notified that the Determination shown below has been made on your claim for Unemployment Compensation under the District of Columbia Unemployment Compensation Act and the Rules and Regulations Relating to Employees.

**DISQUALIFIED FOR REASON CHECKED**

- ☒ Voluntarily left last work without good cause—  
 Sec. 10(a)  
☐ Discharged for misconduct—Sec. 10(b)  
☐ Refusal of suitable employment—Sec. 10(c)  
☐ Refusal of referral to suitable employment—  
 Sec. 10(c)

- ☐ Pregnancy—Sec. 10(h)  
☐ Failure to attend approved training or retraining  
 course—Sec. 10(e)  
☐ Strike or labor dispute—Sec. 10(f)  
☐ Other \_\_\_\_\_

PERIOD: 5 Weeks. Beginning 6-8-68 Ending 7-13-68

The total amount of your potential benefits is reduced \$ 29.00

**REASON FOR DETERMINATION**

You resigned your job at the above-named  
Federal Agency on 6-14-68 because of general  
dissatisfaction with the job. The diss.  
constitutes good cause within the meaning of the  
law for voluntary separation from employment.  
Therefore the indicated period of disqualification  
is imposed.

If you wish to appeal this determination, you may do so at the Local Office in which you have been filing or by writing to that office if unable to report. ANY APPEAL MUST BE FILED IN WRITING WITHIN TEN (10) DAYS FROM THE DATE SHOWN ABOVE. If an appeal is filed, you must continue to report on your regular reporting day as scheduled.

L.O. No. 92

[Signature]  
 Claims Deputy

(See Reverse Side)

F-112

24

**BEST COPY**  
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DUCK 42  
Rev. 1/67

## DISTRICT UNEMPLOYMENT COMPENSATION BOARD

Claim of

Social Security No.

577-54-8735

Appeal No.

20,526-UCFE

Appeal Filed

July 11, 1968Anita H. Smith156 Darrington St., S.W.Washington, D. C. 20032

## DECISION OF APPEALS EXAMINER

On appeal by (claimant) (~~employer~~) from determination dated July 10, 1968, disqualifying her for five-weeks' period beginning June 9 and ending July 13 and reducing potential benefits \$290

Issues: Whether claimant voluntarily left last work without good cause

Evidence: Claim record and testimony of the claimant at a hearing on July 25; although duly notified, the employer did not attend the hearing

Applicable Provision(s) of the District of Columbia Unemployment Compensation Act:

Section(s): 10(a)

(See reverse side of this page.)

P-3611

FINDINGS OF FACT:

Claimant applied for unemployment benefits on June 17, giving a birth date of February 24, 1939. The U. S. Employment Service has given her an occupational title of personnel clerk. She last worked in a clerical position in the Federal civilian service. She started working in February of 1967 and last worked June 14, 1968. Her pay grade was GS-4, step 3. Her employer has certified that the reason for her separation was "I am resigning because of poor transportation, poor military supervisory-employee relations and uns congenial working conditions. My advancement in this position was intensely impeded by (Personal Prejudice) in this department. Findings: Investigation failed to support allegations of employee."

During the period of claimant's employment she made a number of requests for transfer which were denied. She also made a number of unsuccessful applications for work with other Federal agencies. From time to time she secured medical treatment. She was not given medical advice to leave her work.

In authorizing unemployment compensation for Federal employees (Social Security Act amended), Congress has provided that the findings of the employing agency with respect to the reasons for termination of service shall be final and conclusive.

Y AVAILABLE

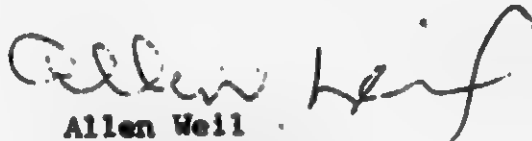
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Page 2

Appeal No. 20,536-UCFE

It is concluded from the foregoing that claimant voluntarily left her most recent work on June 14 and that she has not established good cause for leaving.

DECISION: The above determination is affirmed.



Allen Weil  
Appeals Examiner

July 25, 1968  
AW:nt

BEST

from the

In Re: Claim of  
ANITA N. SMITH

Social Security No. 377-34-8733  
Appeal Number 20,536-UCFB

RESOLVED: That the decision of the Appeals Examiner dated July 25, 1968 in the above entitled case be affirmed. The Board having fully considered the facts as shown by the data and statements contained in the record of said claim is of the opinion that no further hearing of the appeal is justified.

APPROVED BY THE BOARD

Carl D. Coleman  
Chairman

Date AUG 6 1968

cc: claimant  
legal  
appeals  
resolutions

APPEAL FROM DECISION OF DISTRICT  
OF COLUMBIA UNEMPLOYMENT COMPENSATION BOARD

1. This is an action to review a final decision of the District of Columbia Unemployment Compensation Board Appeal No. 20,536 UCFE.

2. The Petitioner, Anita Smith, filed an original claim for unemployment benefits on June 17, 1968. The Claims Deputy determined that the petitioner had voluntarily left her employment at the United States Naval Station, Supply and Fiscal, Washington Navy Yard, without good cause and thus was disqualified to receive benefits for a period of five weeks. The Petitioner appealed this decision to the Claims Examiner, who, on July 25, 1968, after a hearing on the same date, decided that the Petitioner had left her employment without good cause and upheld the decision of the Claims Deputy. The Appeals Examiner's decision cited the Social Security Act as compelling him to find for the employer on the grounds that under the Act, findings of a government agency shall be final and conclusive and that the Agency had concluded that Petitioner had left without good cause. On August 6, 1968, the Unemployment Compensation Board upheld the Appeals Examiner's decision.

3. That the action of the District of Columbia Unemployment Compensation Board is unconstitutional and violative of the due process clause of the Fifth Amendment in that Petitioner was not afforded a fair hearing as to whether her leaving her employment was for "good cause". The Board merely accepted the findings of the government agency which were made without any hearing or pro-

vision for one as to the pertinent facts.

4. That regulations promulgated by the Secretary of Labor implementing 5 USC 8506, Chapter 85 which require that the Secretary of Labor accept findings of fact made by a government agency as to an employee's termination of employment as conclusive, are unconstitutional in that they fail to compel the employing agency to provide a hearing for an employee on the reasons for termination.

5. That the findings of the District of Columbia Unemployment Compensation Board are not supported by substantial evidence.

WHEREFORE, Petitioner prays as follows:

1. That this appeal be given precedence over all civil cases as required by District of Columbia Code 46-312:

2. That the order of the Board be vacated and the Board directed to award Petitioner full unemployment benefits, or, in the alternative, either the Board or the Department of Defense be ordered to hold a fair hearing on the question of the reasons for Petitioner's termination of employment.

3. Any other further appropriate relief.

/s/ Joseph F. Dugan  
Attorney for Appellee

---

ANSWER OF DISTRICT UNEMPLOYMENT COMPENSATION BOARD

Comes now the defendant, the District Unemployment Compensation Board, by and through its attorneys and answers the appeal as follows:

First Defense

The appeal fails to state a claim upon which relief may be granted.

Second Defense

Answering specifically the numbered paragraphs of the appeal, this defendant avers:

1. Defendant admits the allegation in this paragraph.
2. Defendant admits that its claims deputy disqualified plaintiff for a period of five weeks for voluntarily leaving her last employment without good cause and this determination was affirmed by the Appeals Examiner. Defendant denies that the Appeals Examiner was compelled to find for the employer, but avers that his decision was based on the findings of the last employer as to her reason for leaving only.
3. Defendant denies the allegation in this paragraph.
4. Defendant denies the allegation in this paragraph.
5. Defendant denies the allegation in this paragraph.

WHEREFORE, this Defendant (appellee) respectfully prays that this Honorable Court to enter judgment in its favor, and dismiss the Plaintiff's appeal.

/s/ George A. Ross  
James M. Portray, Jr.  
F.G.Gordon, Jr.  
Attorneys for Defendant

---

MOTION OF APPELLANT, DISTRICT UNEMPLOYMENT  
COMPENSATION BOARD, FOR SUMMARY JUDGMENT

Comes now the appellee, District Unemployment Compensation Board, by its attorneys and moves for summary Judgment in its favor against the appellant on the pleadings and the findings in the Board's decision of August 6, 1968. For grounds of this motion appellee says:

1. That there are no triable facts in dispute.
2. That there remain to be determined by the Court only questions of law.
3. That the findings of fact of this appellee in its decision of August 6, 1968 and the Appeals Examiner of this Board in his decision of July 25, 1968 are supported by substantial evidence.
4. That the decision of the appellee, the District Unemployment Compensation Board on August 6, 1968 is in accordance with the facts.
5. For such other grounds as may be called to the attention of the Court at the time of the hearing on this action.

/s/ George A. Ross  
James M. Portray, Jr.  
F.G. Gordon, Jr.  
Attorneys for Appellant

---

STATEMENT OF APPELLANT, DISTRICT UNEMPLOYMENT COM-  
PENSATION BOARD, OF MATERIAL FACTS TO WHICH THERE  
IS NO GENUINE ISSUE

1. That on June 17, 1968, appellant filed a claim with this appellee for unemployment compensation under the Unemploy-

ment Compensation Program for Federal Employees.

2. The appellant was determined monetarily eligible in the amount of \$58.00 a week for a total of \$1972.00.

3. On July 10, 1968, a claim's deputy of this appellee disqualified the appellant for a period of five weeks, beginning June 9, 1968 through July 13, 1968, and reduced appellant's potential benefits in the amount of \$290.00. This disqualification was based on the fact that the appellant had voluntarily left her most recent work without good cause.

4. The appellant appealed this disqualification to the Board's Appeals Examiner on July 11, 1968.

5. On July 25, 1968, a hearing was held before the Appeals Examiner and by decision on that day, July 25, 1968, the claims deputy's determination disqualifying the appellant for five weeks was affirmed.

6. On July 31, 1968, the appellant appealed the decision of the Appeals Examiner to the District Unemployment Compensation Board.

7. On August 6, 1968, by resolution, the Board affirmed the decision of the Appeals Examiner.

8. On September 5, 1968, the appellant filed suit in this Honorable Court.

/s/ George A. Ross

---

DEPARTMENT OF THE NAVY'S MOTION TO DISMISS

Defendant Secretary of the Navy through his Attorney, the United States Attorney for the District of Columbia, respectfully moves the Court to dismiss the above entitled cause for lack of jurisdiction. Incorporated in and made a part of this motion are certified copies of documents from the District Unemployment Compensation Board which are filed herein.

/s/ David G. Bress  
United States Attorney

Joseph M. Hannon  
Assistant United States Attorney

Ellen Lee Park  
Assistant United States Attorney

---

O R D E R

Upon consideration of the motion to dismiss of the defendant, Secretary of the Navy, including the certified copies of documents from the District Unemployment Compensation Board which are filed in this cause and are incorporated in said motion by reference, and of plaintiff's opposition thereto, and of argument of counsel, it is by the Court this 7th day of March, 1969.

ORDERED that the motion to dismiss of the defendant, Secretary of the Navy, be granted, and that the above entitled cause be dismissed as to said defendant

/s/ Matthew F. McGuire  
United States District Judge

---

APPELLEE'S MOTION FOR SUMMARY JUDGMENT

The appellant through her attorney moves this Court to grant a summary judgment in her favor and states her reasons as follows:

1. That the failure of either the Department of the Navy or the Board to grant appellant a hearing meeting due process requirements on the reasons for her employment violates the due process clause of the Fifth Amendment.

2. That the failure of either the Department of the Navy or the Board to grant appellant a hearing meeting due process requirements on the reasons for Smith's leaving her employment is violative of the clear intent of the federal statutes governing the administration of unemployment compensation benefits;

WHEREFORE, the appellant prays that this motion be granted.

/s/ Joseph F. Dugan  
Attorney for Appellee

---

MEMORANDUM OPINION

This is an action to review a final decision of the District Unemployment Compensation Board under 46 D.C. Code 312. Plaintiff was employed as a personnel clerk at the Washington Navy Yard. She resigned for the following then-stated reasons:

"I am resigning because of poor transportation, poor military supervisory-employee relations and uncongenial working conditions. My advancement in this position is impeded by (Personal Prejudice) in this department."

The Navy made a finding at the time as follows:

"Investigation failed to support allegations of employee."

When plaintiff's claim for unemployment compensation was presented to the Board's claims deputy, he disqualified her claim for five weeks on the ground that plaintiff's voluntary termination was, in the words of the applicable regulation, "without good cause, in the light of all such facts, conditions and circumstances as are relevant to the particular case." Plaintiff appealed to the Board's Appeals Examiner and a hearing was held on July 25, 1968. Plaintiff appeared and testified, elaborating her reasons and giving additional grounds for resignation in an effort to show good cause. No contrary evidence was taken. The Appeals Examiner concluded on the basis of the Navy's finding that good cause for leaving was not shown and that the action of the claims deputy was correct and affirmed. This decision then was appealed unsuccessfully to the District Unemployment Compensation Board. The parties now bring the matter before the Court on cross-motions for summary judgment.

Plaintiff contends she was denied due process of law under the Fifth Amendment in that she never received a real hearing on the merits of her case. Plaintiff as an employee of a federal agency is governed in making her claim for unemployment compensation by 5 USC 8501 et seq. Since the Secretary of Labor pursuant to 5 USC 8502 has entered into an agreement with the District Unemployment Compensation Board, any claim by a federal government employee in the District is determined under the provisions

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/s/ Joseph F. Dugan  
Attorney for Appellee

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"Investigation failed to support allegations of employee'."

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Plaintiff contends she was denied due process of law under the Fifth Amendment in that she never received a real hearing on the merits of her case. Plaintiff as an employee of a federal agency is governed in making her claim for unemployment compensation by 5 USC 8501 et seq. Since the Secretary of Labor pursuant to 5 USC 8502 has entered into an agreement with the District Unemployment Compensation Board, any claim by a federal government employee in the District is determined under the provisions

of 46 D.C. Code 301 et seq. However, 5 USC 8506 states, for the purposes of this case, that the findings of the federal agency as to the reasons for termination of employment shall be final and conclusive upon the District Board. Neither the statute nor the regulations issued thereunder describe any procedure by which the Federal agency is to make its findings and no hearing is required.

In this case the Navy informed the District Board that plaintiff's allegations were not supported by its investigation. Since in the case of a federal employee the only task of the Board is to take the facts as found by the federal agency and apply to them the District's standards for compensation, the Navy's finding here effectively precluded any result other than the one reached by the claims deputy. When he disqualified her claim for five weeks she appealed and pursuant to 46 D.C. Code 311(e) a hearing was held before the Appeals Examiner; but this was not a hearing such as one afforded a private employee or an employee of the District of Columbia Government. Plaintiff gave evidence but the Navy did not appear. Then, on the basis of the Navy's finding, the Appeals Examiner affirmed the denial of her claim since the facts as found by the Federal agency were accepted as final and conclusive. \*/

Counsel could point to no specific provision requiring a hearing on the facts before the Navy. Although an ex parte determination by the federal agency may be sufficient to guide the decision of the claims deputy, surely when an appeal is

taken to the Appeals Examiner the claimant cannot be foreclosed from testing these ex parte findings. To hold otherwise would be to cast doubts upon the constitutionality of the statute or the implementing regulations due to the denial of due process of law. Federal claimants who appeal under 46 D.C.Code 311(e), if they have not been given a hearing before the federal agency in order to determine the reasons for termination, must be given a due process hearing in front of the District Board or its representatives as are other claimants. Greene v. McElroy 360 U.S. 474 (1959).

The defendant's motion for summary judgment is denied. The plaintiff's motion is granted in part and this case is remanded to the District Unemployment Compensation Board for a hearing consistent with the terms of this opinion.

Order to be presented.

July 17, 1969

/s/ Gerhard A. Gesell  
United States District Judge

\*/ It should be noted that Regulation III-A of the District Board states:

"Ordinarily a leaving will be presumed involuntary on the part of the claimant unless the facts clearly indicate otherwise. Where it appears that the leaving was voluntary, the burden of proof shall be on the claimant to establish good cause."

---

O R D E R

The Court, after hearing counsel and considering briefs of the parties supporting their cross-motions for summary judgment, having

filed a Memorandum Opinion dated July 17, 1969, it is this 29th day of July, 1969.

ORDERED THAT:

1. Defendant's motion for summary judgment is granted in part. This matter is remanded to the District Unemployment Compensation Board to hold a hearing in the above-captioned case for the purpose of determining the reasons for the plaintiff's terminating her employment with the Department of the Navy and further to determine, based on the evidence adduced at said hearing, whether the plaintiff's leaving her employment was for or without good cause. The District Unemployment Compensation Board is directed to make an independent decision based solely on evidence produced at said hearing and the District Unemployment Compensation Board shall not be found in any respect by any decision of the Department of the Navy as to the reasons for plaintiff's terminating her employment. In other respects plaintiff's motion is denied.

/s/ Gerhard A. Gesell  
United States District Judge

---

NOTICE OF APPEAL

Notice is hereby given this 31st day of July 1969, that Defendant, District Unemployment Compensation Board hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 29th day

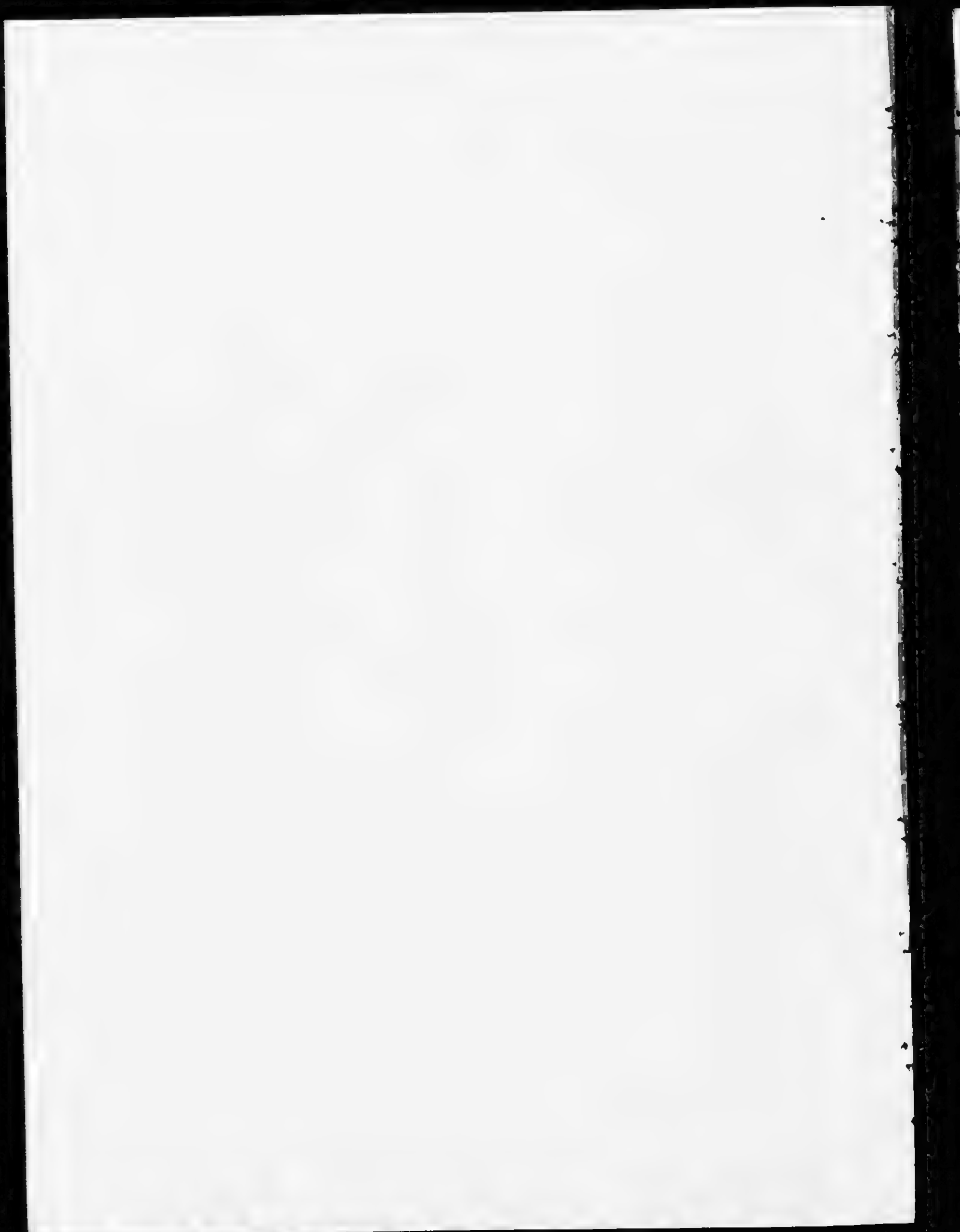
of July 1969, in favor of Defendant, District Unemployment Compensation Board against said Anita Smith.

/s/ George A. Ross

CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing brief has been mailed, postage prepaid, this       day of 1969 to Joseph F. Dugan, Esquire, Attorney for Appellee, Neighborhood Legal Services, 3016 Nichols Avenue, S. E., Washington, D.C. 20530

/s/ George A. Ross



UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA

ANITA SMITH

Appellee

vs.

No. 23448

DISTRICT UNEMPLOYMENT  
COMPENSATION BOARD

Appellant

Paul R. Ignatius, Secretary  
of the Navy

Appellee's Brief

JOSEPH F. DUGAN  
Attorney for Appellee  
Neighborhood Legal Services  
Program  
3016 Nichols Avenue, S.E.  
Washington, D. C. 20032  
561-0100

United States Court of Appeals  
for the District of Columbia

FILED DEC 10 1969

*Jonathan J. Wilson*  
CLERK

THIS CASE HAS NEVER BEEN PREVIOUSLY BEFORE  
THIS COURT UNDER ANY OTHER TITLE

INDEX

STATUTES AND REGULATIONS CITED

CASES CITED

MISCELLANEOUS

REFERENCES AND RULING

I. STATEMENT OF QUESTIONS INVOLVED

II. STATEMENT OF CASE

- A. Summary of Issues Involved
- B. Full Statement of Case

III. SUMMARY OF ARGUMENT

IV. ARGUMENT

A. THAT PROCEDURES USED TO IMPLEMENT 5 USC 8506  
DENIED APPELLEE DUE PROCESS OF LAW

1. The appellee is entitled to a hearing meeting due process requirements on the reasons she left her federal employment.
2. If a hearing must be held what are the minimum procedural requirements?
3. The hearing granted by the Board failed to meet due process requirements in that the appellee had no opportunity to test by cross-examination and rebuttal the Navy's basis for its decision on the reasons for appellee's terminating her employment. Furthermore, the Board made its decision denying her benefits based solely on facts determined outside of the hearing.

- B. CONGRESS DID NOT INTEND TO DENY FEDERAL EMPLOYEES A HEARING MEETING DUE PROCESS REQUIREMENTS.
- C. THE NAVY MADE NO FINDINGS OF FACT TO WHICH THE BOARD COULD APPLY THE STATUTES AND REGULATIONS GOVERNING ENTITLEMENT TO UNEMPLOYMENT COMPENSATION.
- D. THE RELIEF ORDERED BY THE LOWER COURT CAN BE OBTAINED AGAINST THE BOARD.
  - 1. No relief can be obtained through the Federal Personnel System.
  - 2. The relief ordered by the lower Court is proper.

V. CONCLUSION

VI. APPENDIX

# **STATUTES AND REGULATIONS CITED**

	<u>PAGE</u>
5 USC 8501 (L)(6) (Supp IV 1965-8)	15
5 USC 8502 (Supp IV 1965-8)	15
5 USC 8503 (b)(c) (Supp IV 1965-8)	25
5 USC 8506 (Supp IV 1965-8)	3,9,10,18,30,33
5 USC 556 (d) (Supp IV 1965-8).	26
46 D. C. Code 310 (a) (1967)	4, 16,29
46 D. C. Code 311 (e) (1967)	17,25
46 D. C. Code 312 (a) (1967)	17
CFR Title 20, Chapter V, Part 609	18, 27
CFR Title 20, Chapter V, Part 609.7	18
CFR Title 20, Chapter V, Part 609.22	27
CFR Title 20, Chapter V, Part 609.23	27
CFR Title 20, Chapter V, Part 609.35-	26
D. C. Unemployment Compensation Board	
Regulations III-A	16,29
Rule 54(b) Federal Rules of Civil Procedure	10,33

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## PAGE

Ault v. Unemployment Compensation Board of Review 157  
A.2d 375, 398 Pa. 250 (1960)

12

Bliley Electric Co. v. Board of Review 45 A.2d 898,  
158 Pa. Super 548 (1946)

23

Bruszewski v. U.S. War Shipping Administration D.C. Pa,  
(1950), 88F Supp 962 AFF 181 F.2d 419 Cert. den. 340  
U.S. 865

34

Cole v. Young 351 U.S. 536, 100 LE 1396, 76, SC 861 (1956)

13

Darin v. Unemployment Compensation Board of Review, 157  
A.2d 407, 398 Pa. 259 (1960)

12

Dixon v. Board of Education 294 F.2d 150 (5 Cir. 1961)  
Cert. den. 368

14

Electrical Reactance Corporation v. Unemployment  
Compensation Board of Review 82 A.2d 277, 169 Pa. Super  
269 (1951)

23

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(1960)

12

Florida v. U.S. 282 U.S. 194, 75 LE 291, 51 SC 119 (1931)

30

In Re Forte 158 NYS 2d 93, (1956)

24

\* Greene v. McElroy 360 U.S. 474, 3 LE2d 377, 79 SC 1400  
(1959)

14,20

London v. Denver 210 U.S. 373, 52 LE 1103, 28 SC 708  
(1908)

13

McKeon v. Unemployment Compensation Board 169 A.2d 332,  
195 Pa Super 169 (1961)

24

Morgan v. U.S. 298 U.S. 468, 80 LE 1288, 56 SC 906 (1935)

15

Morgan v. U.S. 304 U.S. 1, 82 LE 1129, 58 SC 773  
(1937)

14

\* National Furniture Manufacturing Co. v. Review Board  
of Indiana 170 NE2d 381, 131 Ind. App. 260 (1960)

22

Newmeyer v. Unemployment Board of Review 144 A.2d 606,  
187 Pa. Super 321 (1958)

24

Naugle v. Unemployment Compensation Board of Review 168,  
A.2d 783, 194 Pa. Super 420 (1961)

24

Ohio Bell Telephone Co. v. Public Utilities Commission  
of Ohio 301 U.S. 292, 81 LE 1093, 57 SC 724 (1938)

15

\* Philadelphia Co. v. SEC 84 App. D.C. 73 175 F.2d 808  
(1948)

14

Saginaw Broadcasting Co. v. FCC 68 App. D.C. 282, 96  
F.2d 544 (1938) Cert. den. Sub. nom. Gross v. Saginaw  
285 U.S. 613

30

Sauls v. Employment Security Agency 377 P.2d 789, 85  
Idaho 212 (1963)

24

Slochower v. Board of Higher Education 350 U.S. 551, 100  
LE 692, 76 SC 637 (1956)

13

Kwong Hai Chew v. Colding 344 U.S. 590, 97 LE 576, 73  
SC 472, (1956)

13

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44 SC 565 (1924)

15,21

\* Washington v. Cameron \_\_\_\_ U.S. App. D. C. \_\_\_\_ 411 F.2d 705  
(1969)

35

Wellman v. Whittier 104 U.S. App. D.C. 6, 259 F.2d 163  
(1958)

12

	<u>PAGE</u>
<u>Williams v. Brown</u> 128 U.S. App. D.C. 12, 384, F.2d 981 (1967)	14
* <u>Willner v. Committee on Character and Fitness</u> 373 U.S. 96, 10 LE2d 224, 83 SC 1175 (1963)	13

#### MISCELLANEOUS

2 Davis Admin Law Chap. 16, P. 19	30
U.S. Code and Congressional and Administrative News (1954 2nd Session) p. 3891-3899	11
D.C. App. Exam. Dec. #2249, June 3, 1967	23
D.C. App. Exam. Dec. #6498, September 20, 1954	23

#### REFERENCES AND RULINGS

See Memorandum opinion of the District Court dated July 17, 1969 (JA 18-21)

I. STATEMENT OF QUESTIONS INVOLVED

A. Does the Due Process clause of the Constitution require that before a federal employee is denied Unemployment Compensation Benefits he must be provided a fair hearing. If so, was such a hearing provided in this case? The appellee contends that she was entitled to a fair hearing and that the hearing afforded her in this case did not meet due process standards.

B. Did the Congress intend in making the federal agency the sole determiner of the reasons why a federal employee quit his government job also intend to deny the employee a fair hearing at the agency or the Unemployment Compensation Board. The appellee contends that Congress did not intend to deny a federal employee a fair hearing.

C. Did the federal agency fail to make "findings" on which the Unemployment Compensation Board could base a decision? The appellee contends that the agency failed to make finding.

D. Can the relief ordered by the lower Court be obtained against Board? The appellee argues that it can.

## II. STATEMENT OF CASE

### A. Summary of Issues Involved

This case is an appeal by the District of Columbia Unemployment Compensation Board (hereafter "Board") from an order of the District Court dated July 29, 1969 granting in part Smith's cross motion for summary judgment, and denying the Board's motion for summary judgment.

After a hearing on the Board's motion for summary judgment and Smith's cross motion for summary judgment which took place on May 12, 1969, the lower Court; Gesell, J, issued a memorandum opinion, dated July 17, 1969, (JA 18) holding that neither the Navy Department or the Board had held a hearing meeting due process standards on Smith's claim for Unemployment Compensation. The Court in its opinion stated that the Board must hold an independent hearing on the reasons for Smith's leaving her federal employment.

This case came to the District Court from a ruling by the D. C. Unemployment Compensation Board denying Smith benefits for a five week penalty period on the grounds she had left her federal job without good cause 46 D. C. Code 310(a). The major premise of Smith's appeal to the District Court was the fact that the Board accepted as

"final and conclusive" a decision by the Navy Department made without a hearing as to the reasons Smith left her government job.

The present case therefore, poses two major questions:

- (1) Is 5 USC 8506 which requires the Board to accept as "final and conclusive" findings of fact made by a federal agency as to the reasons for a federal employee's terminating her job constitutional as presently implemented?
- (2) Was it the intent of Congress that no hearing meeting due process requirements was to be held on the reasons for an employee's terminating federal employment?

B. Full Statement of the Case

This case arose in June 1968 when Smith applied for Unemployment Compensation based on federal employment. Earlier in the same month she had quit her job as a clerk with the Navy Department.

The reasons given to the Navy Department by Smith for leaving her employment were as follows:

1. Poor transportation
  2. Poor military and supervisory employee relations
  3. Uncongenial working conditions
  4. My advancement in this position was intensely impeded by (personal prejudice) in this department
- (JA 7)

The Navy, as required by 5 USC 8506, forwarded to the Board a form, ES-931 (JA 7), listing Smith's reasons. The Navy did not, as required by 5 USC 8506, make any findings as to the reasons for Smith's leaving, but merely stated on the form "investigation failed to support allegations of employee". The findings by the Navy appear to have been made on June 27, 1968 by P.D. Alexander, head of the payroll branch. (JA 7)

The claims deputy at the Board then made a determination based on the Navy's finding as stated as on the ES-931. The claims deputy found Smith quit her job because of "general dissatisfaction" and that this did not constitute "good cause" within the meaning of law. (JA 8). The claim's deputy's determination that Smith left her employment voluntarily without good cause was based on the Navy's findings "that investigation failed to support allegation of employee". The claims deputy then imposed a five week penalty during which time Smith could not collect benefits, the minimum penalty under 46 D. C. Code 310(a).

Smith appealed the claim deputy's ruling to the Board. On July 25, 1968 she was granted a hearing. The Navy did not appear, and Smith was not represented

by counsel. At the hearing Smith stated her reasons for leaving. She testified that she had been treated by a doctor who advised her to take one months rest because of exhaustion caused by the pressure of her work (Hearing Transcript p. 3, lines 2-7), that her supervisor was determined to get rid of her and put intense pressures on her (Hearing Transcript p.6, lines 7-13), and that her working conditions were intolerable (Hearing Transcript p. 5, lines 16-20). She also submitted a letter contending that pressure was put on her to force her to resign. (Hearing Transcript p. 2, lines 15-16). The hearing officer did not assist her in elaborating her reasons for leaving federal employment as stated at this hearing.

The hearing officer on the same day wrote an opinion in which he stated Smith had not shown good cause for leaving her federal job. He based his holding solely on the fact that the Navy had found no support for the reasons stated by Smith on the ES-931, and the Navy's "findings" were conclusive as to the reasons for Smith hearing (JA 9-10).

Smith appealed to the full Board who on August 6, 1968 affirmed the hearing officer's decision. On September 5, 1968 she filed an appeal in the District Court against both the Department of the Navy and the Board. On March 7, 1969 the lower Court McGuire J, granted the Department of the Navy's motion for summary judgment (JA 17) The appeal against the Board was heard on May 12, 1969. On July 17, 1969 the lower Court granted in part Smith's cross motion for summary judgment and ordered that the Board hold a hearing meeting due process requirements. The Board has appealed this decision.

### III. SUMMARY OF ARGUMENT

Two major arguments are advanced by the appellee in support of the lower Court's decision.

The first argument is that 5 USC 8506 as implemented in this case is unconstitutional. 5 USC 8506 makes findings of the federal agency as to the reasons a federal employee quit or was fired "final and conclusive". The "findings" made by the Navy in this case were made without a hearing. Possibly by a personnel officer.

The appellee is assuming for the purpose of argument that the statement "investigation failed to supported allegations of employee", which was the specific finding by the Navy, constitutes a finding.

After the "findings" by the Navy Smith was given a "hearing" by the Board. The hearing officer listened to Smith's testimony then rendered a decision stating that he was bound by the Navy's findings as to the facts and then merely applied the law relating to denial of benefits when the leaving of employment is without good cause.

Appellee argues that due process requires that either the agency or the Board must hold a hearing on the reason why Smith left her employment. She argues that ex parte findings of fact do not constitute a due process hearing. She contends that if 5 USC 8506 is not interpreted as requiring a hearing it must be struck down as unconstitutional.

The Second argument is an attempt to convince this Court that Congress intended that a fair hearing be held prior to the federal agency's making its findings.

The appellee notes that states are required by federal law to set up fair hearing procedures in Unemployment Compensation cases. She also notes that Congress has provided a fair hearing procedure for employees in Unemployment Compensation cases involving private employers in the District of Columbia.

Smith also points out that Congress has legislated a hearing procedure to determine eligibility of federal employees to compensation based on federal employment when no agreement exists between the State and federal government. Appellee further contends that Congress in providing hearings in most similar programs such as Social Security, Workmans-Compensation, and Welfare. shows that it expected a fair hearing to be held in the present case.

For all the reasons listed in the preceding paragraphs, it is argued that Congress expected the Secretary of Labor to set up a hearing, probably in the federal agency. By upholding the decision of the lower Court, this Court will avoid having to find 5 USC 8506, as implemented, unconstitutional, and provide appellee with the hearing she seeks and to which she is entitled by right.

The appellant in his brief does not meet the constitutional issue, but confines himself to arguing that the Board merely followed 5 USC 8506 and the implementing regulations by accepting the "findings" of the agency as final and conclusive, and that if the procedure followed here is defective then it is the Navy and not the Board that must be ordered to hold the hearing.

The appellee meets the first argument by noting that the Navy merely took the reasons for leaving stated by the claimant and decided that there was no basis for these reasons. She argues that a statement by the agency that the reasons given to the agency have no bases in fact is not a "finding of fact" on which the Board can base its decision. The Navy and the Board have not even complied with 8506 as presently interpreted.

As to the question of whether the relief sought should have been ordered against the Navy rather than the Board, the appellee notes that Judge Gesell in his memorandum opinion held that his ruling ordering the

Board to hold a hearing would apply only if the government agency did not. In effect he has given the government agencies the opportunity to sort out their problem. He, however, felt that he was required to order a hearing with the Board or find 5 USC 8506 unconstitutional.

The appellee, however, also argues that the Navy 's bound by Judge Gesell's opinion. First, Judge McGuire, in dismissing the case as to the Navy, did not make a final decision under Rule 54 b and hence his decision was subject to reversal. This was the effect of Judge Gesell's decision on the same constitutional issues as presented to Judge McGuire.

Second, the appellee contends that since both the Navy and the Board are government agencies who have closely cooperated in this case to the point of using each other's pleadings they should be considered in privity and that Judge Gesell's opinion should be res adjudicata against both parties.

#### IV. ARGUMENT

##### A. THAT PROCEDURES USED TO IMPLEMENT 5 USC 8506 DENIED THE APPELLEE DUE PROCESS OF LAW

1. Appellee is entitled to a hearing meeting  
due process requirements on the reasons she left  
her federal employment.

The legislative history of the District of Columbia  
Unemployment Compensation Act contains the following  
statement:

"It (the act) removes to a large measure  
the fear of insecurity always haunting the  
worker ... providing him with a definite  
cash benefit to which he is entitled by  
right" H. Rept 858, 74 Congress, 1st  
Session (May 9, 1935) at P. 5, 49 Stat  
946 (August 28, 1935).

The Unemployment Compensation act covering federal  
employees did not come into existence until 1954, but  
sentiments similar to those expressed in the legislative  
history of the D. C. Act can be found in the "House and  
Senate Reports" to the act governing federal employees.  
U.S. Code and Congressional and Administrative News  
1954 p. 3891 - 3894 report on H.R. 9709.

Also, the federal government must consider unemploy-  
ment benefits as requiring due process standards in their  
administration since in 42 USC §503(a)(3) the Secretary of

Labor is forbidden to make any payment to a State toward the cost of administering a program unless the State provides for a "fair hearing before an impartial tribunal for all individuals whose claims ... are denied".

Besides legislative history terming unemployment benefits rights and federal statutes inferring they are rights there are cases treating unemployment compensation and similar benefits as rights.

In Wellman v. Whittier, 104 U.S. app. D. C. 6, 259 F.2d 163 (1958), a case involving the forfeiture of veteran's disability for a Smith Act conviction, this Court stated the administrator could not deny a right the statute had created except for legally sufficient grounds. Two Pennsylvania cases specifically refer to Unemployment Compensation as a right.<sup>1/</sup> Even Flemming v. Nestor 363 U.S. 603 1960, which is generally quoted for

<sup>1/</sup> Ault v. Unemployment Compensation Board of Review 157 A.2d 375, 398 Pa 250 (1960) Darin v. Unemployment Compensation Board of Review 157 A.2d 407, 398 Pa 259 (1960)

the proposition that government benefits are not rights prohibits arbitrary and capricious actions in the administration of Social Security benefits.

Setting aside the question of rights and gratuities and the constitutional requirements in dealing with each, there are abundant cases holding that when a government takes action of an adjudicatory nature, which obviously took place in this case, a hearing must be held.

Starting with Londoner v. Denver 210 U.S. 373 (1908) requiring a hearing on a city tax assessment, a long line of Supreme Court cases have held that when the government acts in an adjudicatory capacity a hearing must be held: before it terminates a man's employment Slochower v. Board of Higher Education 350 U.S. 551 (1956), Cole v. Young 351 U.S. 536 (1956); before it may expell a resident alien, Kwong Hai Chew v. Colding 344 U.S. 590, (1956); before it may deny a man a license or a certificate of admission to practice his profession, Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963);

before a student may be expelled from a State university  
Dixon v. Board of Education 294 F.2d 150 (5 Cir. 1961)  
Cert. den. 368 U.S. 930 (1961).

2. If a hearing must be held then what are the  
minimum procedural requirements?

In Philadelphia Co. v. SEC 84 - U.S. App. D.C. 73,  
175 F.2d 808 317 (1948) this Court stated:

"It is elementary that adjudicatory action cannot be validly taken by an tribunal except upon a hearing wherein each party shall have the opportunity to know the claim of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence on his own behalf and to make argument. This is a requirement of the due process clause of the constitution".

See also Greene v. McElroy 360 U.S. 474 (1959),  
Willner v. Committee on Character and Fitness, supra,  
Morgan v. U.S. 304 U.S. 1, 18-19 (1937) Williams v. Brown  
128 U.S. App D. C. 12, 384 F.2d 981 (CA 1967).

Not only must the person affected by the adjudicatory action be permitted the right to know the claims made against him and to cross-examine his adversary, but the tribunal must make its decision based on facts adduced at the hearing and not on ex parte evidence or matters

not formally put in evidence. U.S. v. Abliene Southern Ry Company 265 U.S. 274 (1924). Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio 301 U.S. 292 (1937), Morgan v. U.S. 298 U.S. 468 (1935).

The fair hearing requirements discussed here are so elementary that no further elaboration is needed. These elementary standards were violated by the Navy and the Board in their denial of the Smith's claim for benefits.

3. The hearing granted by the Board failed to meet due process requirements in that appellee had no opportunity to test by cross-examination and rebuttal the Navy's basis for its decision on the reasons for appellee's terminating her employment. Furthermore, the Board made its decision denying her benefits based solely on facts determined outside of the hearing.

5 USC 8502 provides that a federal employee shall be paid unemployment benefits on the same conditions as a non-federal government employee in the State of his employment provided that the State has entered into an agreement with the federal government.

The District of Columbia is a State under the meaning of the Act 5 USC 8501 (L)(6), and has entered into the requisite agreement.

The conditions under which Smith can claim unemployment benefits in her case relate to whether or not she left her government job without cause. If she left voluntarily "for cause" she can collect benefits for the entire period of her unemployment. If she left voluntarily her employment "without good cause" then she is penalized at least a minimum of 5 weeks 46 D. C. Code 310(a). The code provisions are further amplified by Board Regulation III-A which provides that "ordinarily a leaving will be presumed involuntary --- unless the facts clearly indicate otherwise". Board Regulation III-A also gives examples of what is not considered "good cause" in a voluntary leaving, 2/

- 2/ 1. The following are considered not to be good cause:
- a. Refusal to obey reasonable rules and regulations
  - b. Minor reduction in wages
2. Transfer from one type of work to another which is reasonable and necessary.
3. Marriage or divorce resulting in change of residence
4. General dissatisfaction with work
5. Vague prospects of other work deemed by the claimant more desirable. Board Regulations III-A.

The Code also provides for an appeal procedure for all claimants from the initial determination of eligibility by the claims deputy. The appeal is heard by either a hearing examiner or an appeal tribunal 46 D.C. Code 311(d). In this case it was heard by an examiner. The tribunal or examiner can affirm or modify a finding of fact made by the claims deputy. A further appeal is permitted to the full Board and within 30 days to the District Court 46 D.C. Code 311(e) and 46 D. C. Code 312(a).

There is one important difference in the outlined procedure when a government employee applies for benefits. Instead of the hearing examiner being the fact finder in that after a hearing, he can modify the findings of the claims deputy, the federal employing agency becomes the fact finder. 5 USC 8506 states the federal agency shall make findings as to the reasons for the employee's termination of government services and that such reasons shall be final and conclusive. Provision are made for corrections of omissions by the agency.

In accordance with 5 USC 8506 the Secretary of Labor promulgated regulations implementing the act's provisions. CFR Title 20, Ch V., Part 609. The Regulations establish a form ES-931 which must be sent to the Board containing the agency's findings. Regulation 609.7 gives the claimant and the Board the right to request more information and request corrections of mistakes within a specified time.

Herein, then, lies the constitutional issue: Wherein this maze of statutes and regulations is a hearing provided for government employees challenging an adverse determination of the agency's finding as to the reasons for his leaving his job. In cases of non-federal employees a hearing on all factual issues is provided by a hearing examiner or an appeal tribunal of the Board. In cases of government employees the reasons for the employees' departure have already been determined at the federal agency, in this case apparently by the payroll clerk (JA 7). The hearing examiner at the Board, has no other function than to apply the law to already determined facts.

In this case Smith gave the federal agency four reasons for leaving her job:

1. Poor transportation
2. Poor military and supervisory employee relations
3. Uncongenial working condition
4. My advancement on this position was intensely impeded by (personal prejudice) in this department

At least the last three reasons could, depending on the circumstances, be considered, "good cause". (This question will be discussed later in this brief).

The Navy on the basis of the reasons given by Smith made their conclusive findings as follows:

"Investigation failed to support allegation of employee"

The payroll clerk then forwarded a form (ES-931) containing the "final and conclusive" findings to the Board. The claim deputy decided on the basis of the agency's "findings" that she left her job because of general dissatisfaction (JA 8). On July 25, 1969 a "hearing" was held by the Board's hearing examiner who listened to Smith's testimony and then decided on the same day that he was bound by the "findings" made by the agency. It should be pointed out that Smith at the hearing only

briefly mentioned the factors which resulted in her leaving. She was not represented by counsel nor did the hearing examiner make any attempt to elicit more detailed information. The Navy did not appear.

Certainly the procedure employed in this case and as applied to federal employees generally is constitutionally defective. As Judge Gesell points out in his opinion:

"the Navy's finding effectively precluded any other result than the one reached by the claims deputy". (JA 20)

Smith was denied the right of cross-examination, and confrontation with those in the Navy Department, who disputed her reasons for leaving. Greene v. McElroy supra. An even more obvious constitutional defect was the fact that the Board at its hearing was required, or at least believed it was required, to accept as its finding of fact the same finding of fact made by the Navy:

"that investigation failed to support allegation of employee"

Judge Gesell noted that the Board would be required to hold a due process hearing:

"to hold otherwise would be to cast doubts upon the constitutionality of the statute"

The additional fact noted by Judge Gesell, that the Board was required to reach a pre-ordained result prior to the hearing makes the hearing process employed unconstitutional. Morgan v. U.S. supra U.S. v. Abilene & Southern Realty Company, supra.

If Smith had been afforded a hearing she may very well shown that she left her employment "for cause" and therefore entitled to full benefits. The reasons she gave for leaving, uncongenial working conditions and impediment of personal advancement, only briefly explained at the "hearing" afforded her by the Board, prima facie constitute "good cause".

At her hearing she stated that her supervisor was determined to get rid of her, and put intense pressure on her (Hearing supra). She submitted a letter outlining the pressure which was exerted to force her to resign (Hearing supra). She also contended that she had been treated by doctors because of the pressure of her work, and was ordered to take a month rest, but because of financial reasons was unable to do so. (Hearing supra).

It has been held that intense pressure of a personal nature or intolerable working conditions depending, on degree and severity, can make a voluntary leaving, a leaving for "cause". As the Court noted in National Furniture Manufacturing Company v. Review Board of Indiana 170 NE2d 381, 386, 131 Ind. app. 260 (1960):

"We are of the opinion that all of the circumstances ... in each case of voluntary quitting have to be considered, and if other factors are involved, such as provocation or unjust reprimands or unjust discrimination between employees or any other evidentiary factors which would have a strong influential effect upon the mind of the employee contributing or causing him to voluntarily quit his employment such contributing factors ~~might~~ in certain circumstances be considered a "good cause".

Many other cases in this and other jurisdictions recognize that if one quits because of the pressures of a job the quitting can be voluntary or involuntary and with or without good cause depending on the nature and

intensity of the pressure. Bliley Electric Co. v. Unemployment Compensation Board of Review 45 A.2d 898, 158 Pa. Super 548 (1946). <sup>3/</sup>Electrical Reactance Corporation v. Unemployment Compensation Board of Review 82 A.2d 277, 169 Pa. Super 269 (1951). D. C. App. Exam Dec. #2249 June 13, 1947, D. C. App. Exam Dec #6498 September 20, 1954.

Whether or not the circumstances in Smith's case created a "good cause" situation is a matter which must be decided on facts brought out at an adversary hearing. To permit her to be denied benefits on the basis of an ex parte finding of fact by a government agency whose finding is conclusive is violative of the due process clause of the 5th amendment.

<sup>3/</sup> Bliley notes on page 903 "when therefore the pressure is real not imaginary, substantial not trifling, reasonable not whimsical, circumstances compel the decision to leave ...the decision is voluntary in the sense the worker has caused it, but involuntary because outside pressure has compelled it"....

The appellant in his brief indicates that the case of Newmeyer v. Unemployment Compensation Board of Review 144 A.2d 606, 187, Pa. Super 321, (1958) has decided the constitutional question posed here. This is not true. All the cases cited by appellant as in accord with Newmeyer, are merely decisions of State Courts holding that the question posed here is a federal question. This case is an appeal from a federal district Court. <sup>4/</sup>

B. CONGRESS DID NOT INTEND TO DENY FEDERAL EMPLOYEES A HEARING MEETING DUE PROCESS REQUIREMENTS.

Congress' other legislation regarding unemployment compensation clearly indicates that it never intended to deny appellee a fair hearing. 42 USC §503 a(3) contains the following provisions:

<sup>4/</sup> Other cases dealing with this issue including those cited by appellant are In Re Forte 158 NYS 2d 93, (1956), Sauls v. Employment Security Agency, 377 P.2d 789, 85 Idaho 212, (1963), McKeon v. Unemployment Compensation Board 169 A.2d 332, 195 Pa. Super 169 (1961) Naugle v. Unemployment Compensation Board of Review 163 A.2d 783, 194 Pa. Super 420 (1961)

"The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of the State ... includes provisions for ... a fair hearing before an impartial tribunal for all individuals whose claims for unemployment compensation are denied".

Not only has Congress made a fair hearing a requirement in the States, but in the District of Columbia has granted a fair hearing to employees in private industry. 5/

Also, it has provided for a hearing at the federal agency in cases where there is no agreement between the State and the federal government regarding the administration of benefits for federal employees and consequently, the federal government administers its own program. 6/

5/ An appeal tribunal after affording the parties reasonable opportunity for a fair hearing shall ... affirm or modify findings of fact and the initial determination. 46 D. C. Code 311(e).

6/ Any federal employee whose claim for compensation is denied is entitled to a fair hearing under regulations prescribed by the Secretary. A final determination by the Secretary shall be subject to review by the Courts in the same manner, and to the same extent as provided by Section 405 G of this title. 5 USC 8503. Compensation for Federal Employees in Absence of an Agreement.

Lastly, Congress appears to contemplate a hearing meeting due process requirements when a federal employee's compensation rights are decided in the Virgin Islands 5 USC 8503(b)(c). So does the Secretary of Labor by Regulation. CFR Title 20, Chapter V, 609.35 provides for an "impartial hearing and cross-examination".

Can it be conceived that Congress after requiring States to hold hearings on Unemployment Compensation cases, after promulgating the Administrative Procedure Act <sup>7/</sup>, after providing a hearing for federal employees where no State agreement exists and establishing fair hearing for every other type of government benefit such as Social Security, Workmans-Compensation and Public Assistance really intend that the Secretary of Labor was to set-up the grossly deformed procedure followed in this case? Appellee thinks not.

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<sup>7/</sup> The APA requires every case of an adjudatory nature to be determined on the record after an opportunity for a hearing. It also requires every party shall have the right to conduct such cross-examination as may be required for a full disclosure of the facts . 5 USC 556(d) (Supp. IV 1965-68)

The appellant in his brief argues that the Board is compelled to accept the findings the federal agency as final and conclusive. Disregarding due process issues, Smith argues that the Congress intended the Secretary of Labor to set-up a hearing process in the federal agency prior to the findings of fact. It was the federal agency who should have held the adversary hearing and the Board hearing process, which includes fact finding in cases involving non-federal employees, should have specifically been limited to deciding questions of law. 5 USC 8506(a) supports this view.

"The employing agency shall make findings in the form and manner prescribed by regulation of the Secretary".

The form and manner as described previously, obviously meant after due process hearing. Instead, the regulations merely repeat the words of the statute regarding the finality of agency findings. CFR Title 20, Ch. V. Part 609. The employee is permitted to request additional information CFR Title 20, Ch. V., Part 609.22, and to request corrections 609.23. Smith, incidentally, was not even informed of the fact she had the limited rights set out in the regulations.

It can only be assumed that the Secretary of Labor mistakenly failed to provide a fair hearing system for Unemployment Compensation cases involving federal employees. This left the States, including the District, to adapt their own system providing for adversary hearing in cases involving fact issues to a system where no fact issues were left to adjudicate. This attempted adaption of an adversary hearing system to a law, as interpreted by the Secretary of Labor, which negates the purpose of an adversary hearing is the reason for the constitutional deformity which the Board in this case calls a hearing.

This Court for this additional reason should uphold the decision of the lower Court.

C. THE DEPARTMENT OF THE NAVY MADE NO FINDINGS OF FACT ON WHICH THE BOARD COULD APPLY THE STATUTES AND REGULATIONS GOVERNING ENTITLEMENT TO UNEMPLOYMENT COMPENSATION.

The main argument in appellant's brief is that the Board was only performing its duty under the statute in applying the law relating to what is "good cause" to

the findings of fact made by the Navy. His second argument is that any relief must be obtained from the Navy, not the Board. (This question will be discussed later)

Smith contends that the Navy never made any findings of fact. Smith gave the Navy four reasons for terminating her employment:

1. Poor transportation
  2. Poor military supervisory - employee relations
  3. Uncongenial working conditions
  4. My advance was impeded by personal prejudice
- (JA 8)

The Navy then made the following findings of fact:

"Investigation failed to support allegations of employee".

The Board took this "finding" and applying 46 D.C. Code 310(e), requiring that voluntary termination of employment be for cause and Regulation III-A supra, which makes general dissatisfaction with a job not good cause, and decided that Smith quit because of dissatisfaction with her job.

The problem with the procedure was that the Navy failed to make a finding of fact. They decided that there was no basis for the four reasons given by

Smith. Then why did Smith quit? We are not told, but apparently the claims deputy knew because she, without benefit of any findings of fact, found dissatisfaction as the reason.

It was this issue that Judge Gesell pressed at the hearing in the lower Court. He repeatedly inquired of the Board what "findings" had been made only to have the Board continue repeat to him the text of 5 USC 8506.

Not only does logic force the conclusion that no findings were made by the Navy, but the constitution compels it. One of the most fundamental rules governing administrative procedure is that conclusions of our administrative body must be supported by specific findings of fact. Florida v. U.S. 282 U.S. 194 (1931), Saginaw Broadcasting Company v. Federal Communications Commission 68 App. D.C. 282, 96 F.2d 544 (1938) Cert. den. sub. nom. Gross v. Saginaw 285 U.S. 613, also 2 Davis Administrative Law Chapter 15, P. 19.

D. THE RELIEF ORDERED BY THE LOWER COURT CAN BE OBTAINED AGAINST THE BOARD

1. No relief can be obtained through the Federal Personnel System

The Board complains that if the hearing procedure followed in this case was objectionable relief must be obtained from the Navy and not the Board.

The Board first argues that Smith should have appealed the agency "findings" through the Federal Personnel System. The Board after arguing for this proposition then admits that no relief can be obtained through the personnel system since Smith left voluntarily and consequently there was no agency action. <sup>8/</sup> In this case even if an appeal did lie through the personnel system it still would not decide the question of unemployment benefits or provide the recipient with timely relief.

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<sup>8/</sup> This is correct: CFR Title 5, Chapter 1, Parts 752, and 771 deal only with agency actions such as removal suspension, furlough without pay and reduction in rank. See specifically 752.201(b) 1771.205.

Although not included as part of the record in this case it can be represented to the Court that appellee did proceed through the personnel system and her appeal was rejected by the Civil Service Commission on January 10, 1969 on precisely these grounds: that there had been no administrative action and hence the appeal was not in purview of appealable actions.

2. The relief ordered by the lower Court is proper.

The appellant does not specifically raise the issue as to whether the lower Court had the power to order the Board to hold a due process hearing. Since the thrust of Smith's argument is that Congress probably intended the agency rather than the Board to conduct the hearing and the appellee can anticipate this question she will attempt to deal with the problem.

The appellee joined both the Navy and the Board as Defendants in this case. The District Court, McGuire J. granted the Navy's motion to dismiss on March 7, 1969. The Board's motion for summary judgment was not heard until May 12, 1969. The appellee does not know on what

grounds the Navy's motion was granted. The complaint, however, sought relief against both the Navy or the Board.

Judge Gesell in his ruling noted the possible unconstitutionality of the 5 USC 8506 if no due process hearing was provided either at the Board or the Navy. To avoid holding the statute unconstitutional he ordered that only party before him to hold a hearing. Implicitly he overruled the decision by Judge McGuire, since the basic issue in both cases was the constitutionality of the procedures involved.

Judge McGuire's decision was not "final judgment" under Rule 54(b) since the decision did not decide either or all claims involved nor relief as to all the parties. Also no certificate was included in his order expressly finding there was no just reason for delaying final judgment. This decision was overruled by Judge Gesell's final judgment.

Since both the parties were government agencies it is further argued that they were in privity and that Judge Gesell's contradictory decision on the same issue raised against the Navy became the law of the case although relief was ordered only against the Board. Bruszewski v. U.S. War Shipping Admin, D.C. Pa. 88 F Supp. 962 affirmed 181 F.2d 419 Cert. den. 340 U.S. 865, 95 LE 633, 71 SC 87, (1950).

Even a cursory look at the pleadings filed by the Navy and the Board indicates the degree of cooperation which existed between these parties. Secondly, the fact that both parties are government agencies is a further reason to hold them in privity.

If this Court should conclude that Judge Gesell's opinion should have been directed against the Navy rather than the Board, it could alter it to have the Navy rather than the Board hold a due process hearing.

Appellee believes that there is no reason for altering Judge Gesell's opinion. This Court by upholding Judge Gesell's order against the Board will indirectly correct the deformed hearing process. Whether the Board or the Navy hold the required hearing

will be left for them to decide. Washington v. Cameron  
- U.S. App. D.C. - 411 F:2d 705 (1969). Judge Gesell in  
his opinion states that his decision can be complied  
with by holding a hearing at the federal agency. (JA 21)

V. CONCLUSION

The appellee therefore contends that the decision  
of the lower Court was correct. 5 USC 8506 is being  
implemented in an unconstitutional manner and contrary  
to the intent of Congress.

## VI. APPENDIX OF STATUTES AND REGULATIONS

5 USC Code Chapter 85 Sub-Chapter 8506 Supp III

(1965-67 Ed.)

"(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this sub-chapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal Service, and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this sub-chapter. The information shall include the findings of the employing agency concerning (1) whether or not the Federal employee has performed Federal services; (2) the periods of Federal service; (3) the amount of Federal wages; and (4) the reasons for termination of Federal service. The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for corrections by the employing agency of errors and omissions. Findings made in accordance with the regulations are final and conclusive for the purpose of sections 8502 (d) and 8503(c) of this title. This subsection does not apply with respect to Federal service and Federal wages covered by sub-chapter II of this chapter."

46 D. C. Code Section 310(a)

"(a) An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which such leaving occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the case. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount."

46 D. C. Code Section 312

"(a) Within thirty days after the decision of the Board has become final, any party to the proceeding may appeal from the decision to the District Court of the United States for the District of Columbia. Upon the filing of any such appeal notice thereof shall be served upon the Board by the appellant and upon any other party to the proceeding. Such appeal shall be heard by the court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Board and no bond shall be required for entering such appeal. In no event shall any appeal act as a supersedeas. In any appeal under this section the findings of the case may be, as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law: Provided, That no appeal

shall be permitted under this section by any party who has not first exhausted his administrative remedies as provided by this Act."

#### D. C. Unemployment Compensation Board Regulations

##### III-A

##### "A. Voluntary Leaving Without Good Cause

In determining whether the leaving is such as to disqualify the individual for benefits for the time prescribed, it must appear that the leaving on his part was (1) voluntary in fact, within the ordinary meaning of that term, and (2) without good cause, in the light of all such facts, conditions, and circumstances as are relevant to the particular case. Ordinarily a leaving will be presumed to be involuntary on the part of the claimant unless the facts clearly indicate otherwise. Where it appears that the leaving was voluntary, the burden of proof shall be on the claimant to establish good cause. What is good cause for leaving will accordingly depend upon the facts in each case and will not be confined to causes connected solely with the employment itself. The test will be--what would the reasonable and prudent individual in the labor market do in like circumstances. (Approved October 26, 1954, effective January 1, 1955.)

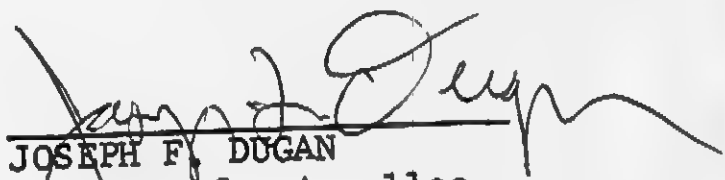
For example, the following in general, would not be considered good cause for leaving:

1. Refusal to obey reasonable rules and regulations.
2. Minor reduction in wages.
3. Transfer from one type of work to another which is reasonable and necessary.
4. Marriage or divorce, resulting in a change of residence.
5. General dissatisfaction with work.
6. Vague prospects of other work deemed by the claimant more desirable.

If the Board finds that a claimant has left his most recent work without good cause, it will proceed to fix such a period of disqualification and resultant cancellation of potential benefit rights (within the limitation of the Act) as it deems warranted by the character and circumstances of the voluntary separation with due consideration to the claimant's past record of employment, duration of most recent employment and other mitigating circumstances. (Approved October 26, 1954, effective January 1, 1955.)"

CERTIFICATE OF SERVICE

I hereby certify that two copies of the appellee's brief was mailed postage prepaid to George A. Ross, Esq., Attorney for appellant, at the District of Columbia Unemployment Compensation Board, 6th & Pennsylvania Avenue, N. W., Washington, D. C. on the 10th day of December 1969.

  
JOSEPH F. DUGAN  
Attorney for Appellee

REPLY BRIEF FOR APPELLANT

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23448

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ANITA SMITH, *Appellee*.

v.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD, *Appellant*.  
PAUL R. IGNATIUS

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

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(i)

Counterstatement of Case.....	1
Argument I.....	2
Argument II.....	2-8
Conclusion.....	8-9
Appendix.....	10-18

#### TABLE OF CASES

Bolger v. Marshall et al, 90 U.S.App.D.C. 30 193 F 2nd 37.....	4
Johnson et al vs. Nelson, 86 U.S.App.D.C. 98, 180 F 2d 386.....	4
Meyers vs. Bethlehem Ship Building Corp., 303 U.S. 41, 82 L. ED 638, 58 St. Ct. 459.....	4

#### REGULATIONS

Regulation III A - Voluntary Leaving Without Good Cause..	19
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UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23448

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ANITA SMITH

APPELLEE

v.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD

APPELLANT

PAUL R. IGNATIUS

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

REPLY BRIEF FOR APPELLANT

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COUNTERSTATEMENT OF CASE

As its counterstatement, appellant adopts, and refers this Court to, the Statement of the Case appearing at pages 2-3 of its brief.

In rebuttal to the two major arguments advanced by the appellee (herein after referred to as Smith) in support of the lower Court's decision, the appellant Board submits the following:

ARGUMENT

I

The first argument is that 5 U.S. C. 8506 as implemented in this case is unconstitutional. (See page 6 in Appellee's brief).

In answer to this argument the appellant (hereinafter referred to as the Board) submits the opinion of the Solicitor of Labor rendered in Re: Claim of James W. Tolbert for the Referee in the State of Michigan. Also the Memorandum and its attachments to all Regional Attorneys from the Solicitor - Subject: Finality of Federal Agencies Findings under Sec. 1507 (a), Title XV of the Social Security Act, amended. The Board adopts the Solicitor's Opinion and Memorandum which delineates the legislative history and congressional intent in answer to Smith's contentions to Argument I. The opinion and memorandum is set forth at appendix 1 of this reply brief.

The Board contends that it is the duty of this Court to interpret the statute in a manner consistent with the congressional intent.

ARGUMENT

II

Smith's second argument is an attempt to convince this Court that Congress intended that a fair hearing be held

prior to the Federal agency's making its findings. (See page 7 in Appellee's brief).

The Board submits that Smith failed to exhaust her administrative remedies in the agency before she applied to the Court for judicial relief. Smith alleges she made several appeals to the Civil Service Commission to have her grievances adjusted but was unsuccessful. But her testimony at the hearing on this allegation is as follows: (Tr. 6-L-16-25

Examiner: What is the Status of that appeal. Have you appealed to the Commission or to your agency?

Claimant: Now I have made appeal to the Civil Service Commission.

Examiner: Whats the status of that appeal?

Claimant: Well, the present status of my appeal, I requested on June 12, that they suspend it for a period of a month because I had wrote to the American Civil Liberties Union and they are considering appointing the attorney, but it would take three weeks for a decision so I had my appeal suspended.

The fact that the administrative remedy available to her in her opinion may not have moved as rapidly as she desired does not create an exception to the rule that the administrative processes must be exhausted before judicial relief is sought.

This Court in a well settled opinion has clearly enunciated the rule in Bolger vs. Marshall et al, 90 U.S.App. D.C. 30, 193 F 2nd 37. Also Johnson et al vs. Nelson, 86 U.S. App. D.C. 98, 180 F 2d 386.<sup>1/</sup>

In a clumsy giant step Smith is attempting to substitute the Board for the Navy to adjust her grievances. Only by distortion does Smith argue that she was denied a fair hearing at the Navy. The record before this Court is void of any showing that she was denied the opportunities of a hearing before she resigned from her position. The Navy has the appropriate machinery to adjust employee-employer complaints with the safe guards of appellate rights to the U.S.Civil Service Commission. This procedure Smith did not choose to follow but instead resigned. By faulty logic Smith has attempted to make a controversy of constitutional dimensions with the Board whereas said Board contends that it is plain that none exist. The record shows that Smith resigned giving as her reasons why she left "poor transportation, poor military supervisory-employee relations. Could not advance." The Navy certified to the Board the following information about Smith's resignation --

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<sup>1/</sup> The United States Supreme Court applied this rule of law in Meyers vs. Bethlehem Ship Building Corp, 303 U.S. 41, 82 L ED 638, 58 S.Ct. 459 citing many authorities on the point.

"I am resigning because of poor transportation, poor military supervisory-employee relations and uncongenial working conditions. My advancement in this position was intensely impeded by (personal prejudice) in this department. Findings: Investigation fail to support allegations of employee."

The fact that the Navy could not find support for Smith's allegations does not deny her due process under the law. Smith indicated that she was dissatisfied with her employment and she quit. The Federal law covering payment of unemployment compensation for Federal employees requires that the findings of the Federal Agency as to the individual's reasons for termination of service shall be conclusive, and therefore the Examiner must accept the Agency's determination that Smith resigned. Smith does not deny the fact that she resigned voluntarily.

The issue for the Board is whether she had good cause for doing so.

Thus, while it is a fact that Smith resigned, the examiner must apply the District Unemployment Compensation law to determine if she voluntarily left this employment without good cause.

Congress has provided that "An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it shall not be eligible" for unemployment benefits for a

specified number of weeks (Emphasis supplied) (Title 46,  
Section 310(a) District of Columbia Code, 1967 Edition).<sup>2/</sup>  
The Board under regulations prescribed by it has provided  
in pertinent part as follows:<sup>3/</sup>

"For example, the following in general, would  
not be considered good cause for leaving:

\* \* \*

"5. General dissatisfaction with work."

No distinction is made under the regulations between  
general dissatisfaction for good cause and general dissatis-  
faction without good cause. Consequently whether plaintiff  
had good cause for being generally dissatisfied is immaterial.  
The only material issue is whether she was generally dissatis-  
fied and there can be no dispute on the record before the  
Court that she was. The Navy does not dispute it.

Judge Gesell has treated the matter as if the Navy  
could not accept claimant's resignation if she had good cause  
and therefore should have held a hearing to determine whether  
she had good cause. There is nothing in the Federal law

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<sup>2/</sup> See Appendix 1 of main brief.

<sup>3/</sup> See Appendix 2 of this brief

which required the Navy to look behind the resignation to find whether Smith was justified in resigning. It was justified in accepting the resignation and leaving to the Board the question of good cause. The case of Green v. McElroy, 360 U.S. 474, cited by Judge Gesell does not hold otherwise. It involved a discharge of an employee of a government contractor because his security clearance was lifted after a hearing in which he was denied access to certain adverse information. The Supreme Court decided only that in the absence of express authorization from either the President or Congress the Secretaries of the Armed Forces were not empowered to deprive petitioner of a job in a proceeding in which he was not afforded the safeguards of confrontation and cross-examination.

In the Smith case claimant resigned, she was not discharged. The decision was not based on evidence which was not made known to claimant. Her resignation was her own act and there was no reason for the Navy to go behind her act to determine whether she had good cause for resigning. Once she had severed the employer-employee relationship the Navy was not concerned with her reasons for doing so. Its only duty was to report the facts to the District Board and leave it to the Board to determine whether there was good cause. The hearing before the Appeals Examiner was the place in which any evidence as to good cause should have been introduced and considered.

Judge Gesell appears to have taken the position that the Board did not consider the testimony at the hearing because it considered that the Navy's alleged finding that the allegations were not sustained was binding on it. The Appeals Examiner's decision does not state that this allegation was binding on him. His conclusion was "It is concluded from the foregoing that claimant voluntarily left her most recent work on June 14 and that she has not established good cause for leaving. (underlining supplied). The underlined words indicate that he arrived at two conclusion. (1) that claimant left voluntarily and (2) that she had not established good cause. The first conclusion was in accord with the Federal findings which was binding on him; *the second conclusion his assessment of the evidence* ~~the second conclusion was his assessment of the evidence~~ at the hearing some of which he mentioned in his opinion.

#### CONCLUSION

In summary the Board submits that appellee Smith has not sustained her position that 5 U.S.C. 8506 as implemented in this case is unconstitutional. Nor has she presented in her brief any competent evidence to support her contention that she was denied a fair hearing. On the contrary the authorities demonstrate that Smith failed to exhaust her administrative remedy before appealing to the Courts for judicial relief. It is further submitted that the lower Court

erred in granting Smith Summary Judgment and therefore in  
view of the above facts the lower Court should be reversed.

Respectfully,

A handwritten signature in cursive script, appearing to read "George A. Ross".

George A. Ross  
Attorney for Appellant

October 26, 1955

Mr. Edward E. Odom  
General Counsel  
Veterans' Administration  
Room 1046-A, Central Office  
Washington, D.C.

Dear Mr. Odom:

This is in response to your request for my opinion as to the meaning of Section 1507(a) of the Social Security Act, as amended. Your request arises from a recent decision by a Michigan referee in re claim of James W. Tolbert which raises the question whether review bodies under the State unemployment insurance law are bound by the findings of fact of the Federal agencies made pursuant to Section 1507(a).

Title XV of the Social Security Act, as amended, authorizes the Secretary of Labor to enter into an agreement with any State, or the agency administering the unemployment compensation law of such State, under which such State agency will, as agent of the United States, make payments of compensation to Federal employees as required by the statute.

Section 1502(c) of Title XV requires that

"(c) Any determination by a State agency with respect to entitlement to compensation pursuant to an agreement under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in such manner and to such extent."

Section 1507 (a) of the statute, however, provides as follows:

"(a) All Federal departments, agencies, and wholly owned instrumentalities of the United States are directed to make available to State agencies which have agreements under this title or to the Secretary, as the case may be, such information with respect to the Federal service and Federal wages of any Federal employee as the Secretary may find practicable and necessary for the determination of such employee's entitlement to compensation under this title. Such information shall include the findings of the employing agency, with respect to--

- (1) whether the employee has performed Federal service,
- (2) the periods of such service,
- (3) the amount of remuneration for such service, and
- (4) the reasons for termination of such service.

The employing agency shall make the findings in such form and manner as the Secretary shall by regulations prescribe (which regulations shall include provision for correction by the employing agency of errors or omissions). Any such finding which have been made in accordance with such regulations shall be final and conclusive for the purposes of sections 1502 (c) and 1503 (c)." (Emphasis supplied)

Congress has therefore specified with vigor and clarity that these enumerated findings of the Federal employing agency, which include the reasons for termination of service, shall be final and conclusive for the purposes of sections 1502(c) and 1503(c). Since section 1502(c) relates to review by State review bodies under the State unemployment compensation law, it appears quite clear that the State review bodies cannot reverse or alter these findings of the Federal employing agency.

The Department of Labor drafted the bill which became Title XV of the Social Security Act (Public Law 767, 83d Congress). That portion of section 1507(a) of Title XV which relates to the findings of Federal agencies and the finality to be accorded these findings was included upon the recommendation of the Bureau of the Budget. Its purpose was to assure that State agencies did not substitute their findings in lieu of those of the employing Federal agencies in the factual areas covered by the enumerated clauses. It was considered that facts of the kind enumerated were peculiarly within the knowledge of the Federal employing agencies and that present Federal personnel procedures afforded adequate machinery for the challenge or correction of errors. The Federal employing agency, with respect to those specific facts peculiarly within its knowledge, was therefore not to be reversed, and such findings were accordingly made final by the statute.

The Under Secretary of Labor in his testimony on this provision of Title XV before the House Committee on Ways and Means emphasized "that the Federal employing agency, instead of the State agency, shall make the findings with respect to certain facts", and that "All of these findings involve questions of Federal employment and wages which require uniform application at the Federal level, rather than interpretations by 51 non-Federal jurisdictions." 1/

/House

1/ Hearings before the Committee on Ways and Means, House of Representatives, 83d Cong., 2d Session, on H.R. 6537, 6539, 7054, 8857 and 8858, p. 55.

The House Committee on Ways and Means in their report on H.R. 9709, which became Title XV, describes the scope and purpose of Section 1507(a) as follows:

"Information.--This section requires all Federal agencies subject to this title to furnish to State agencies, or to the Secretary where the program is not operated by a State, all information which the Secretary determines is necessary and practicable to determine whether a claimant is entitled to benefits. A further provision in this section places in these Federal agencies instead of the State agencies or the Secretary, the sole authority to make whatever findings are necessary on certain issues. These issues are (1) whether a worker is covered by this title, (2) the length of his period of covered service, (3) the amount of his covered wages, and (4) the reasons for termination of his service. The States, or the Secretary where appropriate, would continue to make the findings on all other issues, as well as the final determination as to whether the claimant is entitled to benefits. They would for example, determine whether a particular reason for termination of a worker's service constitutes discharge for misconduct or some other disqualifying factor. Only the finding of the Federal agency as to the reason for termination as well as on the other three enumerated issues, would be final and binding on the State agency and the Secretary."<sup>2/</sup> (Emphasis supplied)

The Secretary of Labor and the Michigan Employment Security Agency have entered into an agreement under which the Michigan agency undertakes to act as agent of the United States for the purpose of making payment of Title XV compensation. This agreement contains the following provisions:

"III. The agency will determine entitlement to compensation under Title XV and such determination will be subject to review in the same manner and to the same extent as determinations under the Michigan law, except that the following findings made by the Federal agency in accordance with regulations prescribed by the Secretary shall be final and conclusive for the purposes of section 1502(c) of Title XV (a) whether the individual has performed Federal service within his base period; (b) the periods of such service; (c) the amount of remuneration for such service, and (d) the reasons for termination of such service."

<sup>2/</sup>House Report No. 2001, 83d Congress, 2d Session, p. 12. Senate Report No. 1794 83d Congress, 2d Session, p. 11.

The Michigan agency has thus been authorized and has agreed to determine and pay Title XV compensation as agent of the United States in accordance with the requirements of Title XV, including the requirement that the Federal agency's findings made pursuant to section 1507(a) be final and conclusive.

The Secretary of Labor's regulations issued pursuant to the authority vested in him by section 1509 similarly provide that the findings of the Federal employing agency enumerated in section 1507(a) shall be final and conclusive. These regulations however, in order to carry out the further requirements of section 1507(a) afford the claimant a method of requesting reconsideration and correction of such findings.<sup>3/</sup>

The regulations also provide that Federal agencies shall furnish to the State agencies any additional information that may be necessary for the administration of Title XV.<sup>4/</sup> These provisions in our opinion afford both the claimant and the State agency ample opportunity to obtain clarification or amplification of the Federal agency's findings. To the extent that the Federal agency's findings of fact do not afford a basis for the State agency to apply its law, a request for additional facts can be made. Where however the Federal agency has found as a fact that the reason for separation was that the claimant was asleep on duty, this finding is conclusive and the State agency may not find otherwise. The application of the State law in such a case would be with respect to whether a discharge for being asleep on duty constitutes "misconduct connected with the work" under the State unemployment insurance law. That Congress contemplated such a situation is clearly evidenced by the following language in the cited congressional committee report "They (State agencies) would, for example, determine whether a particular reason for termination of a worker's service constitutes discharge for misconduct or some other disqualifying factor."

It is our conclusion, therefore, that Title XV of the Social Security Act, as amended, its legislative history, the agreement between the Secretary of Labor and the Michigan agency and the Secretary's regulations provide clear and ample support for the

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<sup>3/</sup> 20 C.F.R., Chapter V, Sections 610.4 and 609.7.

<sup>4/</sup> 20 C.F.R., Chapter V, Section 609.4.

view that the findings enumerated in section 1507(a) made by the employing Federal agency are final and conclusive. The State agency must accordingly apply its law to these facts as found by the employing Federal agency in determining entitlement to benefits under Title XV.

Very truly yours,

Stuart Rothman  
Solicitor of Labor

SOL: AGALBERT:790:bjm  
October 26, 1955

U. S. DEPARTMENT OF LABOR  
Office of the Solicitor  
Washington, 25

RA:ES -- 73

February 9, 1956

MEMORANDUM

To: ALL REGIONAL ATTORNEYS

From: Stuart Rothman  
Solicitor

Subject: UCFE -- Finality of Federal Agencies' Findings under  
Section 1507(a), Title XV of the Social Security Act,  
as amended.

The attached copy of my letter to Mr. Odom, General Counsel of the Veterans' Administration, presents the Department's position on the subject of finality of Federal agencies' findings under Section 1507(a) of Title XV. Questions raised by decisions in several States suggest that this material may prove useful.

Since the issuance of this opinion some refinements have developed which were not explicitly covered. The basic principle is that to the extent that the Federal agency can and does make findings, those findings are final. When the Federal agency's findings do not afford sufficient basis for application of the State law, a request for additional information from the Federal agency must be made, advising the Federal agency of any information given by the claimant or in his behalf. When, however, after these steps have been taken the Federal agency reports either that it does not have any information other than that which it has furnished, or that it cannot divulge any further information, the State agency may, if it believes the facts presented by or in behalf of the claimant, apply the State law to these facts to the extent that they are not inconsistent with the facts found by the Federal agency.

For example, where a Federal agency has advised that an individual resigned for personal reasons; the claimant elaborates on the personal reasons and explains what they were; the State agency sends these facts to the Federal agency to ascertain whether they have any further or contradictory information; and the Federal agency replies that it does not know the personal reasons for which the claimant resigned; the State agency may consider the facts presented by the claimant in determining whether the individual should be disqualified under the voluntary quit disqualification of the State law.

Attachment

ATTACHMENT A

Arguments Supporting  
Retention of Finality Provision

1. The Federal-State relationship through which compensation benefits are paid to Federal employees under the UCFE Program, is one of principal and agent. Benefits are paid to unemployed Federal workers by the appropriate State agency as agent of the Federal Government. The State is then reimbursed by the Federal Government. Reports by Federal agencies of a claimant's employment, wages and reasons for separation--if made in accordance with the regulations and procedures prescribed by the Secretary of Labor--are final and conclusive of these matters. The State agency then makes a determination of the claimant's eligibility for benefits upon the basis of such reports. It must be borne in mind that even in such respect the State agency is acting as agent of the Federal Government.

In this posture, the proposal to place the Agent (the State agency) in a position to review, modify and reverse Federal findings with respect to Federal employment matters would place in the hands of the Agent the authority to overrule its Principal. This we believe would be an inordinate and an undesirable procedure. Its impropriety is emphasized by the fact that two sovereignties are here involved--the Federal Government and the State Government.

Removal of the finality provision could result in a conflict between a State determination (with respect to his right to unemployment compensation) and a Federal determination (with respect to his employment rights) on the same facts. For example, assume that a Federal employee with the right to appeal his discharge through Federal channels is discharged for drunkenness. He appeals such discharge and also applies to the State agency for unemployment compensation. Whether he was drunk is a factual issue. There could be a determination at the Federal level that he was drunk, and a finding to the contrary at the State level. The finality provision avoids such conflict.

2. The Bureau of the Budget has suggested the distinction between the role of the Federal Government as an employer under the UCFE Program and that of an employer-participant in a State unemployment compensation program. It notes that while the State agencies are empowered to review and reverse a private employer's report of a claimant's employment, wages, and reason for separation, these agencies are obliged to make evaluations and determinations protecting the private employer and consistent with the States' interests in their unemployment trust funds. But in the case of Federal workers, where the benefit payments are made from Federal funds, the authority of the State agencies to review and reverse is properly modified because the Federal Government has the paramount interest in the funds expended.

We believe the distinction is proper and is another reason for the retention of the finality provisions of Title XV.

3. The findings made final and conclusive by the provisions of section 1507 (a) of the Title XV involve considerations germane to a prior employment relationship between a Federal agency (the employer) and the compensation claimant (the employee). The Federal agency vis-a-vis the State unemployment agency, is better informed to make an appropriate determination of the claimant's period of Federal employment, wages and reason for separation, since these matters are uniquely related to the claimant's Federal service and fall within the peculiar knowledge of the employing Federal agency. Consequently, to give the State agency the power to review and reverse such findings would make the less suited of the two agencies the final arbiter.

4. Finally, the evidence is inconclusive that the finality provisions of this Title have denied benefits to a significant number of Federal workers. And certainly, there has been no showing that any appreciable number of claims, out of the total of the benefit claims filed under the UCFE Program, have been denied due to the inadequacy of the review machinery provided by this Title. Assuming, however, that a showing can be made which would indicate a problem of serious proportions, the Solicitor's Office believes that the appropriate machinery ought to be established at the Federal level, preferably within the Department of Labor, to cope with these problems.

#### ATTACHMENT B

Excerpt from testimony of Arthur Larson, Under Secretary of Labor, before the House of Representatives' Committee on Ways and Means, June 8, 1954:

"In that report we stated that the Bureau of the Budget has advised this Department of the need for incorporating in these bills a provision similar to a provision in the old-age and survivors' insurance law as set forth in section 205(p) of the Social Security Act. This would provide that the Federal employing agency, instead of the State agency, shall make the findings with respect to certain facts, these findings to be final and conclusive.

but with provision for correction by the employing agency of errors or omissions. The items which would thus be subjected solely to Federal agency findings are (1) whether a particular worker has or has not performed Federal service as defined in the bill, (2) the employee's period of service, (3) the amount of remuneration for such service, and (4) the reasons for termination of employment. All of these findings involve questions of Federal employment and wages which require uniform application at the Federal level, rather than interpretation by 51 non-Federal jurisdictions. The States would, however, continue to apply their laws in all other respects and on all other issues."

(Hearings on H.R. 6537, 6539, 7054, 8857 and 8535, 83d Cong., 2d Sess. p. 55).

## REGULATION III--DISQUALIFICATION FOR BENEFITS

### A. Voluntary Leaving Without Good Cause

In determining whether the leaving is such as to disqualify the individual for benefits for the time prescribed, it must appear that the leaving on his part was (1) voluntary in fact, within the ordinary meaning of that term, and (2) without good cause, in the light of all such facts, conditions, and circumstances as are relevant to the particular case. Ordinarily a leaving will be presumed to be involuntary on the part of the claimant unless the facts clearly indicate otherwise. Where it appears that the leaving was voluntary, the burden of proof shall be on the claimant to establish good cause. What is good cause for leaving will accordingly depend upon the facts in each case and will not be confined to causes connected solely with the employment itself. The test will be--what would the reasonable and prudent individual in the labor market do in like circumstances. (Approved October 26, 1954, effective January 1, 1955))

For example, the following in general, would not be considered good cause for leaving:

1. Refusal to obey reasonable rules and regulations
2. Minor reduction in wages
3. Transfer from one type of work to another which is reasonable and necessary
4. Marriage or divorce, resulting in a change of residence
5. General dissatisfaction with work
6. Vague prospects of other work deemed by the claimant more desirable.

If the Board finds that a claimant has left his most recent work without good cause, it will proceed to fix such a period of disqualification and resultant cancellation of potential benefit rights (within the limitation of the Act) as it deems warranted by the character and circumstances of the voluntary separation with due consideration to the claimant's past record of employment, duration of most recent employment, and other mitigating circumstances. (Approved October 26, 1954, effective January 1, 1955.)



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ANITA SMITH

Appellee

v.

DISTRICT UNEMPLOYMENT COMPENSATION BOARD

Appellant

Paul R. Ignatius,  
Secretary of the Navy

No. 23,448

United States Court of Appeals  
for the District of Columbia Circuit

FILED SEP 24 1970

PETITION FOR REHEARING  
SUGGESTION FOR REHEARING EN BANC

*Nathan J. Paulson*  
CLERK

The appellant respectfully requests this Honorable Court to grant it a rehearing and because of the great national impact strongly urges that such hearing be granted en banc. The rehearing should be granted for the following reasons.

1. Unemployment insurance was unknown at the time the Constitution was drafted and also unknown to the common law. Accordingly an individual applying for unemployment insurance must obtain all his rights within the four corners of the statute granting unemployment insurance. On the other hand, the individual is subject also to all the conditions set out within the four corners of the statute. Unemployment Insurance for former Federal employees was granted in an enactment of Congress in 1954, 5 USC 8501, et sec. Congress made a provision where the Federal Agencies would transfer their wages to the appropriate State

agency which had an agreement with the Department of Labor to administer the program. The District of Columbia has such an agreement and the wages in the instant case were transferred to the appellant. In its infinite wisdom Congress foresaw that with the numerous State agencies involved, now there being 51, that it must institute some control by the respective Federal Agencies in various areas. Without such controls the states could go off at many various angles and ignore the Federal Agencies, thus the Federal Government would lose control of the program. Accordingly Congress enacted 5 USC 8506 (a) which establishes the conditions upon which a State agency may operate. One of these conditions is paramount before the Court in this case. That condition is that findings made in accordance with regulations by the Department of Labor for the reasons for termination of Federal service are final and conclusive for all purposes upon the State agency.

In the instant case the appellant received the findings of the Federal Agency and applied them to the appellee and assessed her the minimum disqualification allowed by law for voluntary leaving without good cause. Congress again in its infinite wisdom did not see fit to grant the State authority to hold a hearing at which it could ignore or change the Federal finding for the reason of termination and also in other matters as it would destroy the Federal control over the system.

The opinion of the Court ignores the plain language of the statute and seeks to bring into play the provisions of

42 U.S. Code 503 (2)(3) which is a general provision applying to the States' administering unemployment insurance in the private sector. It is to be noted that 42 USC 503 (a)(3) was enacted prior to 1954. It has long been an established legislative precept that a subsequent provision on a specific matter would take precedence over a prior enactment on a general provision. The opinion of this Honorable Court invades the legislative field which by Article 1, Section 1 was exclusively granted the Congress.

2. The appellee has failed to exhaust her administrative remedies. The Secretary of Labor in his regulations promulgated in connection with the legislation provided a means whereby a claimant seeking benefits and being aggrieved by the finding of the Federal agency might make a request for a reconsideration and correction of the findings. See 20 C.F.R. 609.23. The Secretary in a further regulation Section 609.25 of 20 C.F.R. provided:

"A determination or redetermination by a State agency as to a Federal Civilian employee's entitlement to compensation is subject to review, except for Federal findings, in the same extent as other determinations under the State unemployment compensation law . . . ." (Emphasis added).

This regulation is quoted in the opinion of the Court and the Court itself also emphasized the words "except for Federal findings." Though in turn the Court ignored these words. The appellee made no request under 609.23 nor did she seek to

subpoena any witnesses from the Federal department making the findings in question. The record before the Court on review is completely void of any evidence in which appellee was denied an opportunity for a hearing at the Federal Agency prior to her resignation or subsequent to her resignation. Indeed the record clearly demonstrates that appellee never applied for a hearing. It cannot be said that the Federal Agency failed to provide an opportunity for a hearing in where remedies for a hearing have never been tested. The cases are legion, many decided by this Court, that an individual who fails to exhaust her administrative remedies has no standing in court.

3. After the decision by Appellant Board, the appellee filed a petition to review the decision of the Appellant Board naming as defendants both the District Unemployment Compensation Board and Paul R. Ignatius, Secretary of the Navy. On March 7, 1969, the petition was dismissed as to the Secretary of the Navy by a judge of the United States District Court for the District of Columbia and until this date no appeal has been filed by the appellee to said dismissal. The finding which aggrieved the appellee was made by the Navy Department and not by the appellant and any quarrel that the appellee had or any rights which the appellee sought for redress was with the Department of the Navy and not with Appellant Board. When the appellee allowed this dismissal, she lost any rights which she might have against the Department of the Navy. It is respectfully submitted that whether the United States District

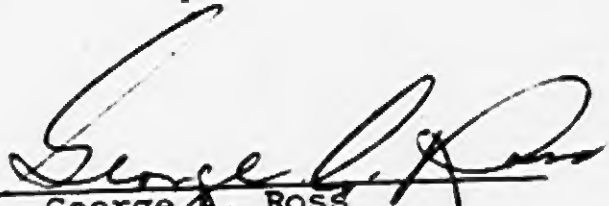
Court judge's decision was right or wrong it has become final many months ago and is dispositive of the entire issue before this Honorable Court.

4. The decision of this Honorable Court seeks to establish a remedy against the U.S. Navy Department for the appellant although that Department was not a party to this appeal. Such a ruling is strictly without due process of law. It is further submitted that the opinion of the Court appears to ignore the legislative history supporting the finality provisions of 5 USC 8506. It is the contention of the appellant that it is the duty of the Court to construe the law in the manner consistent with the legislative intent of the Congress.

5. Unemployment insurance for Federal Employees is paid in 50 other jurisdictions beside the District of Columbia. Many millions of dollars are paid in the other jurisdictions each year and although the decision of this Court is not controlling and binding upon the administrative agencies and courts in the other jurisdictions, because of the stature of this Court, the decision would be highly persuasive and very dangerous to the unemployment compensation program.

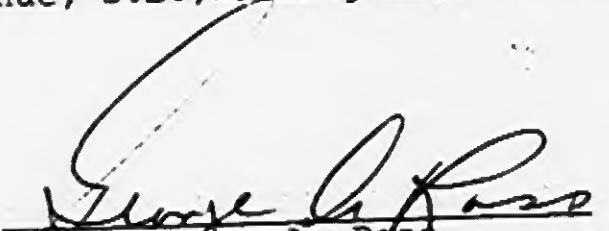
Because of the foregoing reasons, it is respectfully submitted that the appellant should be granted a rehearing and it is strongly suggested that such rehearing should be en banc.

WHEREFORE, appellant prays that this petition be  
granted.

  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the appellant's  
Petition for Rehearing Suggestion for Rehearing En Banc has  
been mailed, postage prepaid, this 24th day of September 1970  
to Joseph F. Dugan, Esquire, Attorney for Appellee, Neighborhood  
Legal Services, 3016 Nichols Avenue, S.E., Washington, D.C. 20032

  
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